

MISC. TITLES





PE/HW/MP-01

### TSCA/EPCRA

OTS SOUNDS CALL TO ARMS: Bias toward action, going public.  
EXPANSION IDEAS accompany release of EPCRA Section 313 data.  
CHLORINATED SOLVENTS investigation revived in TSCA agenda.  
CARPET PETITION denial backed by OTS assessment.  
TWO SLIPS IN 30,000 shouldn't cost \$1.3 million, 3M insists.  
SECTION 5 AND 13 TSCA violations seek \$215,750 payment.  
12 TERATOLOGY studies submitted by Monsanto in auditing report.

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### FIFRA

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FOOD SAFETY may be in farm bill, Sen. Cochran says.  
FIFRA DOUBTS, NEEDS heard at conference.  
DELANEY CLAUSE use on Section 409 tolerances denied by EPA.  
CARBOFURAN USE linked to kill of 200 birds in Virginia.  
LIST A DATA CALL-IN, OMB role, reregistration definition noted.  
BOTRAN APPLE residue must be undetectable: FDA.  
IPM PROGRAM FOR RICE reportedly reconsidered by Indonesia.  
BEACON, ACCENT Section 18 exemptions denied to more states.  
LABELING PREEMPTION brief filed by western agricultural group.  
TOMATO PESTICIDE USE being tracked in USDA study.  
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### HAZARDOUS WASTES

CHEMICALS TREATED ON LAND should get credit for it, API says.  
4,615 RCRA FACILITIES, and most not assessed, GAO reports.  
REFUSAL TO OBEY ORDER leads to EPA suit against four firms.  
RISK-BASED STANDARDS' future for sites unclear, Cannon says.  
MARKET INCENTIVES endorsed by panel for environmental regulation.  
TRICIL RECOVERY SERVICE cited for \$25,000 proposed RCRA penalty.  
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### GENERAL

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TWO ENVIRONMENTAL LITIGATION conferences lead announcements.  
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# California Journal

THE MONTHLY REPORT ON STATE GOVERNMENT AND POLITICS

February 1975 \$1.50

PE/IN/EB-01



**The MeDi-CAL Mess:**  
How can it be cured?

**SPECIAL SUPPLEMENT - '75 Roster and Guide**



"Underschied"



# Unclassified

Newspaper of the Association of National Security Alumni — Vol. 3, No. 3. June-July 1991

## Restatement of Principles

Two years ago, in the second issue ever of UNCLASSIFIED, the Association described covert operations and explained its opposition to them.

"These operations," we wrote, "include secret conduct of or support for military and paramilitary operations in foreign countries, terror, assassination, kidnapping, torture, sabotage, black or gray propaganda, and the use of 'plausible denial' to conceal these activities from the American public.

"On the basis of professional experience, the Association's members have concluded that covert actions are counterproductive and damaging to the national interest of the United States.

"They are inimical to the operation of an effective national intelligence system, corruptive of civil liberties, including the functioning of the judiciary and a free press. Most importantly, they contradict the principles of democracy, national self-determination and international law to which the United States is publicly committed."

In the two years since these words were written, the Association has, we think, provided convincing evidence of their truth. However, nowhere have we heard the point made so eloquently and mordantly as in the statement opposing continued military and "intelligence" assistance to El Salvador made by former United States Ambassador Robert White during his April 10, 1991 appearance before the Western Hemisphere Subcommittee of the House Foreign Affairs Committee.

(See *Ambassador White Speaks Out* at right.)

## Ambassador White Speaks Out

Former Ambassador to El Salvador, Robert White, told a congressional committee on April 10, that "the United States bears a share of the responsibility in inflicting on the people of El Salvador a military that massacres its own citizens and enjoys total immunity for its outrages." He went on to say (and UNCLASSIFIED quotes him at length):

"This responsibility of the United States is not limited to supplying weapons. During the investigation of the murder of the Jesuits, the Washington Post and the Lawyers Committee on Human Rights, among other sources, reported that a group of CIA officers share a building with the Na-

**"It would seem unrealistic to expect the Salvadoran military to place themselves under the law when we have taught them that the rewards of a U.S. connection are for those who hold the law in total contempt."**

tional Intelligence Directorate (DNI), the Salvadoran military intelligence agency. These CIA agents routinely attend DNI meetings. On November 16, 1989 a junior Salvadoran officer interrupted the DNI meeting to report the death of the Jesuits. Those in attendance 'cheered and clapped.' When asked if CIA agents were present at the November 16 meeting, Ambassador Walker told a group of American Jesuits, 'I have asked the question and they tell me no.' I am sure the Jesuits had no trouble in comprehending why Ambassador Walker phrased his response in such a careful manner.

"For the CIA to participate in the intelligence deliberations of another government is a highly dubious practice, reminiscent of our Vietnam experience. In the first place, no truly sovereign government would tolerate the presence of foreign observers at such sensitive internal meetings. Secondly, our presence and participation in these meetings would appear to make our government an accessory to the policies and actions of the Salvadoran military, in somewhat the same manner that we were complicit in the policies and actions of another Central American military. I speak of Panama.

"In Panama, the name of General Manuel Noriega became synonymous with corruption and brutality. It was a secret from the American people that General Noriega was an asset of the Central Intelligence Agency but it was not a secret from the officers of the Panama Defense Force (PDF). To the contrary, the power of Manuel Noriega to take over control of the PDF related directly to the perception by his fellow officers that he was the chosen instrument of our intelligence community. Without the CIA connection, de-



cent officers in the PDF might well have taken matters into their own hands early on and successfully ousted Noriega. These officers knew that Noriega was a drug trafficker, and they knew that the U.S. government knew. They concluded therefore that Noriega and his policies reflected the priorities of the U.S. government.

"There is no exact parallel to Manuel Noriega in the Salvadoran armed forces. Yet, if you seek a reason why the Salvadoran military have seldom taken congressional concerns about human rights violation seriously and have never tried or convicted any officer for any crime, you might well query some Salvadoran captains and majors about the relationship which exists between the CIA and certain senior military officers whose reputation for cruelty and barbarism sets the worst possible example.

It would seem unrealistic to expect the Salvadoran military to place themselves under the law when we have taught them that the rewards of a U.S. connection are for those who hold the law in total contempt." (White's whole statement can be found in *International Policy Report*, Center for International Policy, Washington DC, April 1991. Reports are available for \$1.50—20 or more \$.50 each—from Center for International Policy, 1755 Massachusetts Ave., NW, Suite 324, Washington DC 20036)

White, a career diplomat, writes from bitter experience. His statement supports the declarations of former Salvadoran death squad member Cesar Vielman Joya Martinez, with whose case UNCLASSIFIED readers are familiar, that US advisors were attached to the Salvadoran army unit to which he belonged.

## The Association's Modest Proposal

Recently, Association Washington Director David MacMichael served as the United States delegate to the International Peoples Tribunal on impunity for crimes against humanity in Bogota, Colombia. He argued, and the Tribunal, which reports officially to the United Nations, incorporated in its findings, that the United States advisory and training relationship with the military and intelligence organizations of the countries of Latin America do, as White points out, contribute to the commission of these crimes and involve the United States both legally and morally in responsibility for them.

The Tribunal recommended that the Latin American countries prohibit the entry of foreign military training and advisory missions and refuse to permit the maintenance of "intelligence stations" as part of diplomatic missions.

The Association strongly recommends that the United States adopt a policy of refusing to send military missions abroad and abolish, in accordance with the recommendations of Senator Daniel Moynihan's (D-NY) "end the Cold War" legislation (see UNCLASSIFIED, Vol. 3, No.1, February-March 1991), the insertion of CIA stations in US embassies.

It should be possible to negotiate international agreements by which countries would neither send nor receive military missions nor permit other than strictly diplomatic officers to be present in embassies. Experience shows that military and intelligence representation tends to exacerbate the tendencies in the host countries for militarism and repression. Recent events in the US strongly indicate that the same tendencies here are likewise strengthened by the links established with repressive military and intelligence apparatuses abroad.

(Note: On June 26, the Bush administration announced the resumption of military assistance to the Salvadoran government. The aid had been suspended in reaction to the Jesuit murders. The resumption was justified on the ground that the insurgent forces in El Salvador have acquired Soviet-made SA-16 anti-aircraft missiles to defend themselves against US-supplied government bombers and helicopters flown by the forces which murdered the Jesuits. Obviously, defending one's self against air attack is terrorism, or close to it. Thus, President Bush really had no choice but to start sending the weapons again—or so he argues).

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Unclassified is the publication  
of the Association of  
National Security Alumni.  
Published bimonthly. Editorial  
office: 2001 S Street NW,  
Suite 704, Washington, D.C.  
20009; 202-483-9325  
FAX 202-483-9314.  
Editor: David MacMichael  
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UNCLASSIFIED has used many of its pages over the past several issues on the post-Iran-contra attempts of Congress to deal with the problem of covert operations. The question is important in itself, taken as a whole or looked at in its pragmatic, ethical or constitutional aspects, since it deals with the objectives, i.e., the ends, of our society, the means we are prepared to use to attain those ends, and, finally, the political regulation of the process of

choosing ends and means (objectives and methods)—the legal and constitutional questions.

It seems to UNCLASSIFIED that President Bush's November 16, 1990, veto of the 1991 intelligence authorization bill was a watershed event, an extreme and even brazen denial of any legal or constitutional power in Congress to control or in any significant way regulate or share in the selection of goals and methods for the conduct of foreign

policy. The veto has finally, it appears, forced a very reluctant Congress to respond—in some ways forcefully, in others timidly—to the executive's challenge.

This issue of UNCLASSIFIED is devoted largely to a discussion of S1325, the "Intelligence Authorization Act, Fiscal Year 1991" reported by the Senate Select Committee on Intelligence on June 19 (legislative day June 11) 1991. Without an understanding of the ongoing,

and now, we believe, intensifying legislative-executive, constitutional struggle over the sharing of control over foreign policy formulation and implementation on the question of covert action, it is impossible for us as citizens either to comprehend what is going on or to hope in any way to influence the outcome. UNCLASSIFIED sees its role as trying to provide its readers with that understanding. We welcome your comments on our interpretation.

## Oversight—The Intelligence Committees Try Again

Congress still has not been able to pass an intelligence authorization some eight months after President Bush vetoed the 1991 bill in November. The lower house, to be sure, passed its version, HR 1455 (See UNCLASSIFIED April-May 1991), but that included no mention of covert operations or oversight. Clearly, it was intended as a non-controversial stopgap to deal with the anomalous situation in which, with the fiscal year 1991 almost over, the president is spending appropriated funds for which there is no authorization as required by the National Security Act. (A reliable congressional source explained to UNCLASSIFIED that to avoid the obvious legal and constitutional problem this poses, the administration has been careful not to claim *officially* that he has a right to do this. Likewise, the intelligence committees have been careful not to denounce *officially* the fact that the president is spending the appropriated funds without the legally required authorization. This has prevented an immediate crisis but at the cost, perhaps, of setting a disturbing precedent).

### Oversee No Evil, Overhear No Evil

In mid-May the House Permanent Select Committee on Intelligence (HPSCI) reported out its 1992 authorization, HR 2038, which again included no oversight provisions or discussion of covert operations. The very brief bill—six pages long—only states in its final section 402, "Restriction on conduct of intelligence activities," that "The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States."

Arguably, this all encompassing boilerplate ought to do the job. Former HPSCI chairman Anthony Beilenson rebuked an interviewer recently who inquired as to how the committee dealt with illegal covert actions, declaring angrily, "We don't engage in any illegal activities."

Nevertheless, it is disconcerting to see HPSCI twice within a few months simply ignore last year's burning issue of congressional oversight. As was the case last year it will be left to the same non-HPSCI member, Barbara Boxer (D-CA), to call the question. According to a Boxer staff member, she is preparing an updated version of the defeated amendment she proposed last fall. No details are available, but UNCLASSIFIED assumes Boxer will again insist that Congress has the right and duty not merely to be informed of planned covert actions by presidential findings but to approve or disapprove them.

### McCurdy Lies Low

One surprising aspect of HPSCI's low profile legislation is that the departure of the passive, some would say subservient, former chairman Tony Beilenson, in favor of the ambitious Dave McCurdy (D-OK) plus appointment to the committee of five certifiable liberal Democrats, including Ron Dellums (D-CA) and David Bonior (D-MI), both denounced by administration sources as anti-intelligence, (UNCLASSIFIED, February-March 1991) was supposed to presage a tough, confrontational stance on the part of HPSCI. McCurdy declared that the committee had not been "aggressive enough" and said his goal was "to re-establish our credibility as an oversight committee." It is, perhaps, too early to judge, but McCurdy has hardly come out swinging.



According to HPSCI chief counsel Mike Sheehy, the absence of an oversight section in HR1455 (the 1991 bill), was due to the fact that the Senate Intelligence Committee negotiations with the White House on the matter were not heading in a direction agreeable to HPSCI, and the committee chose not to act until it could see the outcome. When it was learned that the Senate Committee had chosen to treat the matter in its 1991 version, the House group decided also to leave oversight out of its 1992 version pending the fate of the 1991 bill in conference. Sheehy assured UNCLASSIFIED that HPSCI will make its views known in conference. Further, he says, Chairman McCurdy expects to express his own opinions on the question of oversight and covert operations publicly after the mid-summer congressional recess.

## Some Surprising Senate Shifts

The Senate Intelligence Committee finally reported out its proposed version of the 1991 bill on June 19, S1325. Usually considered more considerate of presidential and intelligence community sensitivities and claimed prerogatives

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than HPSCI, the Senate body, surprisingly, showed more interest than its sister committee in holding executive feet to the fire on oversight.

Ten of the bill's 40 pages deal with oversight (Title VI). However, the bill ties one hand behind its back at the outset by repeating, as did its vetoed predecessor, the words: "Nothing in this title shall be construed as requiring the approval of the intelligence committees as a condition precedent to the initiation of any significant anticipated (*sic*) intelligence activity."

This said, a close reading of S1325 and the accompanying report (S. Rept. 102-85) shows the Senate Intelligence

Committee taking a much tougher approach to the matter of covert operations and oversight than ever before. Whether this is a reaction to the president's cavalier veto of the first 1991 bill or an indication that last year's debate and public pressure actually caused a rethinking cannot be known. However, a comparison of not only the bill itself but the explanatory language and tone of the accompanying report with their predecessors reveals important differences in approach and attitude. This is a significant improvement, UNCLASSIFIED believes. There is, though, when dealing with covert operations the unfortunate choice made to amend existing legislation (law) to make it congruent with presidential practice and definitions as expressed in presidential executive orders (non-law) rather than insisting that practice be brought into conformity with law.

Even here, though, the objective is defensible. For example, by placing in law the otherwise regrettable executive order claimed authority for the president to use any executive agency for covert actions as opposed to current law (the 1974 Hughes-Ryan Amendment to the Foreign Assistance Act of 1961) which authorizes only the CIA to be so employed, the Senate Committee wants to make sure that the president can be held responsible for covert actions in which he uses agencies other than the CIA. As the Report puts it, this "gives statutory force to a policy that has previously been a matter of Executive discretion." By the same token, the proposed bill places the onus on the president personally to keep the intelligence committees fully informed of US intelligence activities, both ongoing and anticipated. Currently, the law puts the obligation on the Director of Central Intelligence (DCI).

The proposed law also shifts from the DCI to the president the obligation to report any illegal intelligence activities to the committees. Moreover, where reporting of illegalities currently must be done "in a timely fashion," this phrase does not appear in the new bill, and the Report says its intent is that the president inform the committees "whenever a probable illegality is confirmed under the procedures established by the President."

In all this there is, of course, a certain charming naivete or, depending on one's point of view, a chuckleheaded and far from charming credulousness. Surely, no one over the age of ten and with a claim to mental competence can envision a President of the United States discovering that some covert operation in which his minions are engaged violates the statutes or Constitution of the United States and hastening to inform the chairmen of the committees. And, of course, the Report allows "that the President may require time to investigate an activity to determine that a probable violation has occurred before reporting to Congress." One can almost hear the shredders whirring.

Once again, though, there is, however feebly expressed, a new sense that it is the president who is to be held responsible. This appears again in the deletion of the qualifying clause in subsection 501(a) of the current law which imposed obligations on all parties only "[t]o the extent consistent with all applicable authorities and duties, including those conferred upon the Executive and Legislative branches of Government." The report acknowledges that "Recent experience indicates that legislation qualifying its terms by reference to the President's constitutional authorities may leave doubt as to the will of Congress and thus invite evasion." How true.

It is section 503, "Presidential Approval and Reporting of Covert Actions" that is of most interest to the Association. The Association's position continues to be that covert operations should not be employed at all. Its alternative position is that if covert operations are used, congressional approval is required. Neither position is taken by the Senate Committee. However, the language of the report, as remarked earlier, does indicate a significant shift from the traditional acquiescence in (indeed, enthusiasm for) executive use of covert operations and rejection of the notion that Congress could or should exercise any real control or had any rights



beyond that of being informed of what had been decided and what was going on.

The report distinguishes between the president's nearly unrestricted power to use executive agencies to gather information and the limits which Congress can place on his use of covert actions that go beyond information gathering. "Congress," it says, "has the constitutional power to refuse to appropriate funds to carry out covert actions and may impose conditions on the use of any funds appropriated for such purposes." Congress intends not only to be informed but to have a say in the conduct of operations, to ensure "that covert actions are conducted with proper authorization in the national interest as determined by the elected representatives of the American people—the President and the Congress...." Again, this is a significant change in tone and a bold assertion of congressional power that approaches, if it does not reach, the desideratum of requiring prior congressional approval before the executive can act.

## **Findings Keepers**

The section of the report dealing with the much-mooted question of the presidential finding that must be presented to the committees is something of a disappointment. It establishes that a covert action may not be authorized unless the president "determines such activities are necessary to support identifiable foreign policy objectives of the United States and are important to the national security of the United States." This gives far too much discretion to the executive and once again shows a measure of senatorial naivete. Naturally, the president, if he wishes to do something

in this line, will declare it necessary to the foreign policy and important to the national security. Nowhere is it stated that he must convince Congress that this is the case.

Until now, under the Hughes-Ryan Amendment, the finding had to show only that the operation was important to national security. This at least gave the impression that covert actions were essentially defensive in nature, undertaken to ward off significant threats in exceptional circumstances. The addition of the requirement that they be necessary to support foreign policy objec-

tives, far from being a restriction, is an invitation to employ covert methods more freely than in the past. The committee report boasts that the word "identifiable" should prevent an overly general description of the foreign policy objective and "that the foreign policy interests to be served by a covert action are well-thought out prior to approval and not contrived after the fact."

One more it seems the senators who wrote this report are divorced from experience. Any National Security Council staffer worth his clearances can contrive plausibility before as well as after the fact. In any event, it hardly matters what the finding says so long as the committees deny themselves the power to reject even the most absurd presidential representations.

Five conditions are imposed in addition to the foreign policy and national security determinations. The first requires that the finding be in writing unless immediate action is necessary and time doesn't permit preparation of a written finding. It is hard for UNCLASSIFIED to imagine a situation, with the stenographic resources available to the White House, where the presidential will could not be almost instantaneously put on paper. The purpose, though, reflects healthy mistrust. It is expressly to prevent some presidential flunky from claiming to have received oral authorization.

The second condition prohibits retroactive findings. The third requires that the finding identify any executive agency or government contractor other than the CIA that will participate in other than minimal routine fashion in the proposed activity. Regrettably and, in UNCLASSIFIED's view, probably illegally, the law would require, as explained in the report, that employees and contractors obliged by their agencies or employers to take part in a covert action be subject to the regulations of the CIA.

## **Third Party Time**

The fourth condition addresses the matter of "significant" third party or third country participation in a US covert action. Requiring that requests to third countries or parties for participation be included in a finding was the principal reason given by President Bush for vetoing the 1991 authorization bill last November.

The Senate Committee here is inordinately careful of presidential sensibilities. It tiptoes around the issue and by insisting that the reporting requirement only includes "significant" participation opens the door to endless future wrangles about what constitutes significant. Not only that, the committee states specifically that the finding need not name the country(ies) or party(ies) involved, only if their participation is contemplated. However, the committee is at pains to make clear that it is a presidential responsibility "to approve specifically the use of third countries or private parties outside normal U.S. Government controls to implement a covert action in any significant way." Once again, the intent, clearly, is to make the president himself directly and personally responsible for the covert actions he initiates.

## **Covert Actions—Does or Does Not the Law Apply?**

The fifth condition, though, is a real disappointment. Certainly, Iran-contras Independent Counsel Lawrence Walsh must have read it with disappointment, if not outrage. Ostensibly establishing that a finding may not authorize any action that violates the Constitution or any statute of the United States, it actually appears to grant to the CIA, at



least, a blanket exemption. Let the report language speak for itself:

"...paragraph 503(a)(5) would establish that a finding may not authorize any action that violates the Constitution of the United States or any statute of the United States. This is similar to section 2.8 of Executive Order 12333, which states that nothing in that Order 'shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.' Current CIA policy is to avoid violation of any federal statutes

which apply to covert actions directly or which apply to government agencies in general.

(Italics UNCL) However,

CIA possesses statutory authorities to carry out its authorized functions that are unavailable to other government agencies. This provision is not intended to require that covert actions authorized in presidential findings need comply with statutory limitations which, by their own terms, apply only to another U.S. Government program or activity....[S]tatutes which may prohibit conduct by private parties may not be applicable to the CIA or other

government agencies because of the absence of the *mens rea* necessary to the offense. For example, the Justice Department takes this view with respect to the Neutrality Act. In short, there may be covert actions undertaken by the CIA which do not violate U.S. statutes because the statutes themselves do not apply to the CIA. (Italics again by UNCL) However, any such case deserves intense scrutiny by the Executive branch, and by the intelligence committees, in their respective reviews of covert actions. It is intended that the intelligence committees will establish procedures to obtain analysis of the impact, if any, of existing statutes on each covert action as part of their routine oversight functions." Unhappily, this paragraph gives a whole new dimension to the concept of weasel wording. To say, on the one hand, that covert actions may not violate the laws or the Constitution—a self-contradictory proposition in itself—and then to declare with a straight face that the laws may not or do not apply to the CIA in its conduct of such operations is to mock and insult the public. It certainly does explain, though, how a Tony Beilenson can say that US intelligence does not engage in any illegal activities. Pathetic.

## The "Timely Notice" Conundrum

Returning to matters involving the relationship between the President and the committees, rather than the conduct of covert actions *per se*, the report is less slippery and ambiguous. In the section dealing with the contentious matter of how long a period of time can elapse after the initiation of a covert action for which no prior notice was given (no find-

ing presented) and still constitute the legally required "timely notification" by the president to Congress which the National Security Act has required since 1980, the committee again shows some desire to rein in presidential pretensions. The contrast between the fawning and acquiescent language of the report accompanying last August's S2834 and that of the report discussed here is startling.

Quoting from the insolent Justice Department memorandum on this matter of December 17, 1986, declaring that the

president has "virtually unfettered discretion to choose the right moment for making the required notification," the committee, as it had done before, rejects the interpretation out of hand. It also, though, reprints the text of President Bush's 1990 letter to HPSCI which had asked his views on the Justice Department memorandum.

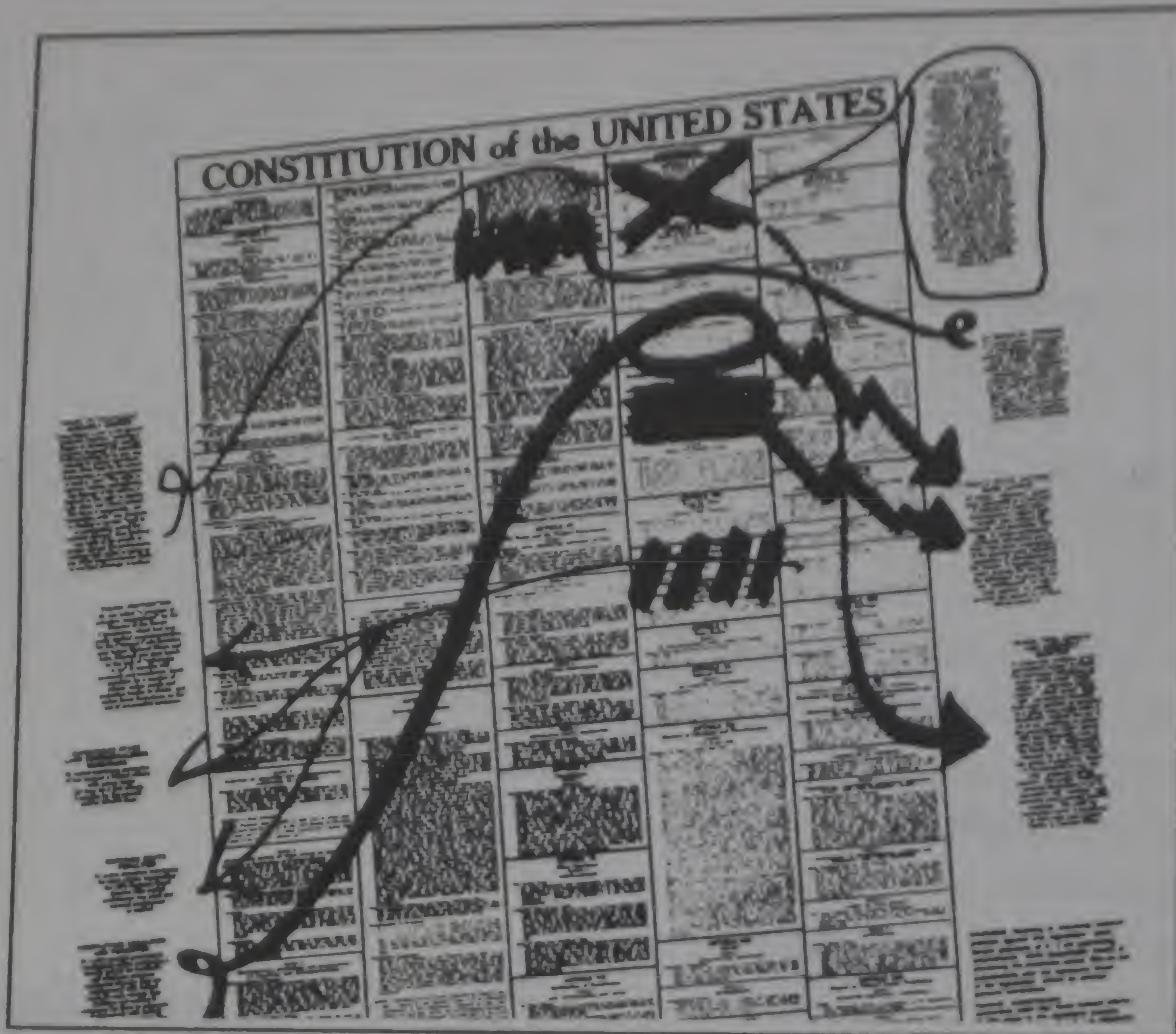
In the letter Bush quoted the memorandum's "virtually unfettered language" and pointedly did not renounce it. He did say, though, that he anticipated giving prior notice in "almost all instances." Then he concluded:

"In those rare instances where prior notice is not provided, I anticipate that notice will be provided within a few days. Any withholding beyond this period will be based upon my assertion of authorities granted this office by the Constitution."

During last year's honeymoon, a swooning committee reported that this now-you-see-it-now-you-don't verbiage was, in fact, a commitment to the within 48 hours standard, hailing it as a major presidential concession. The senators, disabused by Bush's disclaimer of any such understanding in his November 16 Memorandum of Disapproval of the original 1991 authorization bill, make their position clear in language found on page 41 of the current report. They acknowledge the president's assertion of authority but respond:

"The Committee has never accepted this assertion, but recognizes that this is a question that neither the Committee nor the Congress itself can resolve. Congress cannot diminish by statute powers that are granted by the Constitution. Nor can either the Legislative or Executive branch authoritatively interpret the Constitution, which is the exclusive province of the Judicial branch.

"Congress is, however, free to interpret the meaning of statutes which it enacts. While the Committee recognizes that it cannot foreclose by statute the possibility that the President may assert a constitutional basis for withholding notice of covert actions for periods longer than a 'few days,' we believe that the President's stated intention to act under the 'timely notice' requirement of existing law to make a notification 'within a few days' is the appropriate manner to proceed under this provision, and is consistent with what the Committee believes is its meaning and intent."





The White House, according to the *Washington Post* (June 20, 1991, A20), "has some concerns" over the matter of notification.

## **Just What Is Covert Action, Anyhow?**

One thing the bill does is to establish, at least so far as the Senate Intelligence Committee is concerned, a definition of covert action binding both Congress and the executive. To quote: "The term 'covert action' means an activity or activities conducted by, or on behalf and under the control of, an element of the United States Government to influence political, economic, or military conditions abroad so that the role of the United States Government is not intended to be apparent or acknowledged publicly,...." Excluded from this definition are activities which have as their "primary purpose" the acquisition of intelligence, counterintelligence activities, security programs and administrative activities. Also excluded are "traditional diplomatic or military activities or routine support to such activities" as well as the "traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities" and "activities to provide routine support to overt activities...of other United States Government agencies abroad." Prohibited are covert actions intended to influence United States political processes, public opinion, policies, or media."

The report argues that the definition is necessary to resolve differences between the Hughes-Ryan Act and executive branch practice. It states that the CIA and the executive branch in general have interpreted Hughes-Ryan as it suited their preferences through a series of executive order definitions. There is, though, general agreement that paramilitary operations, propaganda, political action, election support and related activities are covert action. Very importantly, the report acknowledges that many activities that are, in fact, covert operations "but for which it would be impractical to seek Presidential approval and report to Congress" are simply not defined as covert action, no findings are made, and are not reported to Congress. Congress, it confesses, has "to some extent...known of and acquiesced in this practice." (This is an important admission. It exposes a critical and perhaps fatal weakness in the oversight legislation. It is the president who decides whether or not to present a finding. According to former assistant to the Director of Central Intelligence Victor Marchetti, in a conversation with UNCLASSIFIED, that decision is based on whether the cost of the operation is so large, or the scale or nature of the operation is such that it will draw attention. In other words, whether or not a presidential finding is made or presented to Congress depends on whether or not the executive thinks it can get away without one. Since there is no penalty, or, certainly, no penalty is ever applied, for getting caught there is little incentive to do otherwise).

Thus, in order to regularize the situation, the committee strives mightily, through lengthy and, at times, almost impenetrable argument, to confine its oversight to the narrowest and most incontrovertible set of activities. The essential

characteristic of these is that the role of the United States Government is not apparent or acknowledged publicly at the time the activities are undertaken. "The U.S., in other words, seeks a form of plausible denial to the outside world."

It would be pointless to attempt to describe all the exceptions and points of interpretation with which the report struggles. However, given the discussion in previous issues of UNCLASSIFIED about the growing military role and the fact that a large area of covert operations conducted by US military forces seemed to have been exempted from congressional oversight in last year's legislation, the committee's interpretation of this matter deserves consideration here.

The report shows that the committee has drawn back from its previous position in which the armed forces were given an almost blank check to escape congressional oversight when their activities were conducted at times of "imminent hostilities"—a phrase subject to almost any interpretation. This phrase has been changed to "preceding hostilities which are anticipated" and this is defined to mean that "approval has been given by the National Command Authorities for the activities and for operational planning for hostilities." Moreover, the language emphasizes that these must be under the direction and control of a US military commander.

As UNCLASSIFIED reads this, it means that the old practice of the CIA using Special Forces in its covert activities without benefit of a finding is now prohibited by Congress. Additionally, it is clear that for the military itself to undertake covert activities (except, and this is a very big except, for "contingency" operations to rescue US hostages in foreign countries and to take part in counterterrorist or counter-narcotics operations abroad where the US intends to reveal its participation after the operation) the Secretary of Defense and the Joint Chiefs of Staff must have begun formal war planning. This presumes notification of the congressional armed services committees allowing some form of oversight.

## **Collision Course, Compromise, or Cavein?**

It is not clear when final action will be taken on the 1991 authorization, nor, following conference what the unified bill will look like. Nor, despite the intensive negotiations that have gone on between the committees and the administration, whether President Bush will sign what is produced. UNCLASSIFIED's interpretation of the oversight provisions of S1325 is that they are tougher and more restrictive of claimed executive prerogative than were those in the bill which Bush vetoed in November.

From the speech the president gave at Princeton on May 10, one can guess that he is in no mood to yield. He said: "It is the president who is responsible for guiding and directing the nation's foreign policy. The Executive Branch alone may conduct foreign policy. Our founders noted the necessity of performing this duty with 'secrecy and dispatch,' when necessary.

"...This does not mean that the executive may conduct foreign policy in a vacuum. I have a great respect for Congress and I prefer to work cooperatively with it *wherever*



possible. Though I felt...that I had the inherent power to commit our forces to battle after the U.N. resolution, I solicited congressional support before committing our forces to the Gulf war. So while a President bears special foreign policy obligations, those obligations do not imply any liberty to keep Congress unnecessarily in the dark." (Italics UNCL)

The president went on: "Oversight, when properly exercised, helps keep the executive accountable. But when it proliferates wildly, it can confuse the public and make it more difficult for Congress and the president to do their job properly."

"The chief executive also preserves, protects, and defends the Constitution through the use of the veto power. Six times in my presidency, I have vetoed bills that would have weakened presidential power. In one case, for instance, where Bush spoke directly to the veto of the intelligence authorization—UNCL) Congress wanted to make the president disclose a wide variety of sensitive diplomatic contacts and discussions, as well as private discussions with the Executive Branch—and would have threatened to impose criminal sanctions on a wide range of normal diplomatic activities. I noted in my veto message that, 'The result would be a dangerous timidity and disarray in the conduct of U.S. foreign policy. Such a result is wholly contrary to the allocation of powers under the Constitution.'"

In this little-reported address at Princeton, Bush first sneered at Congress—"I would not keep [it] in the dark unnecessarily"—and then threw down the gauntlet. He will use the veto to defeat any legislation he sees as diminishing absolute presidential power over foreign policy. If the Senate intelligence authorization bill is the challenge to presidential pretensions it appears to be then another veto is possible. This would bring on, unless Congress caves in completely, the constitutional confrontation the committees have sought to avoid by not publicly challenging the president's spending the intelligence budget for fiscal 1991 without benefit of the legally required authorization.

**George Bush: "Six times in my presidency, I have vetoed bills that would have weakened presidential power."**

Senate chairman David Boren clearly is concerned that during the upcoming conference on the authorization bill the newly appointed and as yet to be heard from liberals on HPSCI—Delums, Bonior, et al.—will strengthen congressional claims to the point where another veto will bring on a clash with the administration. He has stated publicly that he is "committed to working with the president during [the]...conference" to prevent this. (Washington Post, June 20, 1991, A19)

## Gates Gate

On May 14, President Bush announced he had chosen deputy National Security Advisor Robert Gates as Director Central Intelligence, the new head of the CIA. This was a week after the resignation of William Webster, and there was speculation that the delay was due to White House negotiations with key senators. (Norman D. Sandler, "Bush Taps To Head CIA," UPI, May 14, 1991). Bush himself, according to the *Washington Post* front page story on May 15, "talked with members of the Senate Intelligence Committee and pronounced himself 'very, very satisfied....All will be well.'"

If this was the strategy, it had early success. In 1987, President Reagan had nominated Gates, then deputy director of the CIA, to succeed the deceased William Casey. The nomination was opposed by senators suspicious of his role, black thereof, in Iran-contra. He had helped prepare false testimony for Casey and, as deputy director, had shown, according to the testimony, insufficient interest in finding out what was going on even as the evidence of wrongdoing was brought to his attention. In the face of hard questioning then, he voluntarily withdrew his nomination. However, the moral consensus as reported in the media after Bush announced his choice was that Gates had "matured" and gained experience" and was now totally acceptable. Even Senator Arlen Specter (R-PA), his most implacable opponent in 1987, appeared on ABC's *Nightline* to say that he would support the nomination.

The school of thought, to which UNCLASSIFIED belongs, had it that Bush, by nominating Gates, was following

the pattern he had shown in selecting the late John Tower for Secretary of Defense and Donald Gregg for Ambassador to South Korea. These were loyalists who had protected Bush during Iran-contra and deserved reward. Just as important, getting them through the confirmation process, in which questions about Iran-contra and Bush's relation thereto were bound to come up, would allow, as the Gregg case, especially, showed, the administration to claim that the fact of confirmation had settled the matter and absolved Bush. Senator Dennis DeConcini (D-AZ), who planned to quiz Gates on Iran-contra during hearings, sensed little support in the Senate for that approach. "People," he said, "just want to put [Iran-contra] away." Arlen Specter argued that Iran-contra had been "investigated enough" and that the Gates confirmation hearings should not be used to reopen it. (*Washington Post*, May 15, 1991, 1A).

Finally, Bush seems to be challenging congressional Democrats by appointing controversial figures and daring them to do anything about it. He sees this, too, as a function of his view of presidential power. In the speech at Princeton on May 10, previously cited, he chided Congress for daring to take "aggressive action against specific presidential powers, including the power to appoint or remove employees who serve at the president's pleasure."

Yet, as UNCLASSIFIED goes to press six weeks later, not only has Gates not been confirmed, but his nomination has not yet been officially sent to the Senate. At the earliest, according to Senate Intelligence Committee staff, hearings will not be held until after July 15. In hindsight it appears



that Bush would have been wise to rush the nomination through because opposition has built up rapidly. Interestingly, much of it seems to have come from within the CIA itself. According to one well-connected source, Agency officers who know of Gates's role in Iran-contra were dismayed at his nomination. They believed that his confirmation hearings would reopen Iran-contra. Said one, "Why

didn't Bush just go ahead and name Don Gregg?"

Moreover, Gates has enemies within the CIA who regard him as a self-serving sycophant rather than a "true Agency man." Evidence for this opposition appeared in the *Washington Post* (Sunday Outlook, June 23) in an op-ed, "The See-No-Evil CIA Nominee," by old CIA hand Tom Polgar.

Polgar, the former Saigon station chief

who, improbably, was the chief investigator for the Senate Select Committee on Iran-contra, did a classic slash and burn job on Gates. He sneered, "...Gates earned a reputation as an able staff officer, outstanding briefer..., reliable subordinate and a non-competing deputy. These are qualities much sought after in Washington, particularly during periods when management is valued more highly than leadership." Polgar concludes, "...what kind of signal does his renomination send to the troops in the intelligence commu-

**"...what kind of signal does [Gates's] renomination send to the troops in the intelligence community? Live long enough and your sins will be forgotten? Serve faithfully the boss of the moment, never mind integrity?"**

**—Retired senior CIA officer Tom Polgar**

nity? Live long enough and your sins will be forgotten? Serve faithfully the boss of the moment, never mind integrity?"

There may be more to the rise of opposition within and without the CIA to Gates than mere professional animosity or fear of reopening Iran-contra wounds. Gates's alleged own role in the October Surprise affair is now being discussed.

President Jimmy Carter's deputy national security adviser, David Aaron, suspects that Gates was one of the disloyal national security staff members who were reporting on Carter's attempts to secure the release of the hostages to the Reagan-Bush 1980 campaign staff and thus helping in the sabotage of those attempts. "Gates was my assistant for some time," says Aaron. "...Nonetheless, he became not only a favorite of Bill Casey's but, as you now see, is about to be named the head of the CIA going from the Bush White House." Bob Woodward, in *Veil*, says that what attracted Casey to Gates was the latter's willingness "to bend the rules." (Robert Morris, "Behind the 'October Surprise,' Village Voice, May 21, 1991).

Ari Ben-Menashe, the former Israeli intelligence officer who claims to have been part of the Israeli team that negotiated the 1980 October Surprise with Iran, told UNCLASSIFIED in a personal interview that Gates was not only a key figure in the illicit negotiations but had thereafter worked with him to coordinate the delivery of billions of dollars worth of US arms to Iran. Gates denies this.

The public may be tired of Iran-contra, but increasingly the October Surprise allegations have produced popular demands for investigation. (See *October Update* in this issue). Intelligence Committee member Senator Alan Cranston (D-CA) has publicly referenced Ben-Menashe's statements as his reason for requiring a delay in Gates's confirmation hearings to allow further investigation.

## UNCLASSIFIED UPDATES

### *I Shadow Justice*

**INSLAW**—On May 8 the Justice Department's appeal of the verdict finding it guilty of illegally using the INSLAW Company's computer software in federal bankruptcy court in 1988, a verdict upheld on first appeal in US district court in 1989, succeeded. Reversal came on a technical ruling by Judge Stephen F. Williams, circuit judge of the US Court of Appeals, that the case should not have been in bankruptcy court in the first place. The ruling means the whole case (for details see UNCLASSIFIED April-May 1991) must be retried again in US district court. INSLAW president William Hamilton is determined to fight. "There is no way in the world that the Justice Department is going to be able to get away with this," he said.

Following the verdict, rumors flew in Washington legal circles about high level administration pressures. An attorney close to the district judge who had ruled in INSLAW's

favor in 1989 believes that the district court opinion upholding the bankruptcy court had been misread in a manner that must have been deliberate. Hamilton's lawyer, former attorney general Elliot Richardson appeared to support this feeling when he told the *St. Louis Post-Dispatch*, (May 8, 1991, 1) "What is at stake here is the integrity of the criminal justice system as well as compensation to individuals who have been victimized by government wrongdoing."

UNCLASSIFIED has also learned that at least part of the Justice Department's refusal to turn over documents in this case, either to the courts or to congressional committees is that the supersecret National Security Agency (NSA) is somehow involved. This alleged involvement may also have played a part in Judge Williams reversal.

**RICONISCIUTO**—In a related development, Michael Riconosciuto, self-styled CIA asset, whose affidavit in the







rect word from the office itself, but for weeks rumors have been anticipating some action.

Former *Washington Times* national security reporter Glenn Garvin maintains links with sources inside the CIA. They report devastated morale at Langley as up to 50 current and former officers have been called before Walsh's grand jury in March and April. Walsh's investigators have gotten access to transcripts of supposedly secure Agency telephone conversations dealing with Iran-contra. The officers' candid statements differ markedly from the sworn testimony they gave in various phases of the Iran-contra hearings. All could face perjury charges. According to Garvin ("Shaking Down the CIA," *Washington City Paper*, May 10, 1991, 14), the officers are being questioned particularly about Duane Clarridge, Alan Fiers, Clair George and the current Paris station chief known variously as Tony Feldman and Philip Mason. Ambassador to South Korea Don Gregg is also thought to be a target. He has come from Seoul to testify several times in recent weeks.

Garvin quotes one CIA source: "Some guys when confronted with their own words have been pretty horrified. Some of them...forgot the axiom: you write everything as if its going to be read by a congressional staff, you talk on the phone like Congress was listening." He concludes, though, on the basis of the Fernandez case, that even if indictments are forthcoming convictions are doubtful. "Under these circumstances," he writes, "it's difficult to see how any CIA defendant could be convicted."

Garvin's account was supported by Walter Pincus writing in the *Washington Post* (May 11, A14). He quoted a lawyer for one of the CIA officers as saying that he believed Walsh won't be able to prosecute, but that he is planning to include the material in his final report.

These accounts provide grim documentation for students of Shadow Justice. As Judge Walsh has reported earlier, the national security system has produced a whole class of officials who cannot be prosecuted for the commission of crimes, a blow to the concept of equal justice under law.

## II Trashing the CIA

Must reading for those seeking a crash course on the current state of affairs in the CIA and the larger "intelligence community" is Pulitzer Prize-winning, *Philadelphia Inquirer* Washington correspondent Tim Weiner's June 27 *Rolling Stone* piece, "Rewiring the CIA for a Post-Cold-War World." This is a brief catalogue of, not so much the immoralities of the CIA, although these are mentioned, but of its very expensive incompetence over the years.

Moynihan's abolish the CIA proposal will not fly in a Congress which, presented in 1987 with the plain need to take control, in Weiner's words, "blew it." The legislators will insist that we need a "good intelligence service." But, says Weiner, "...the CIA isn't it." He writes, "The cold war created an intelligence empire that too often resembled its Soviet archenemy: a closed society, resistant to reform. If Congress really wants to reshape American intelligence, it will have to open up the system of secret agencies funded by secret budgets fueling secret decisions."

Maybe, says Weiner, the paradox of running secret agencies in a democracy can't be resolved. "Maybe the CIA corrodes democracy and should be thrown on the scrapheap of history," he muses. On the record he presents, you could make a good case for it. One thing is certain, it can't produce good intelligence. And, as Weiner hints, it may not want to.

Arch-conservative *New York Times* columnist William Safire joined the CIA bashing (*New York Times*, July 4, 1991, A15, "Rating Our Spooks.") denouncing "intelligence flops," "smug CIA analysts," and the spooks of summer," he asks, "what institution is watching our secret watchers...?"

Surprisingly, he seems to suggest more vigorous congressional oversight.

**ON THE DRUGS AND THUGS FRONT**—A weekend conference held May 29 to June 1 at Penn State University produced a series of papers by such experts as Association member Peter Dale Scott, University of Wisconsin professor Alfred McCoy (author of the 1973 classic *Politics of Heroin in Southeast Asia*), Larry Lifschultz and others. Lifschultz's paper, "Inside the Kingdom of Heroin: The CIA, Mujaheddin & Pakistan," is a carefully documented, on the ground study of the inevitability of major covert operations providing opportunity and, usually, protection for narcotics trafficking. (To get these papers, write Barbara Licatovich, Administration of Justice Department, College of the Liberal Arts, The Pennsylvania State University, 901 Oswald Tower, University Park PA 16802, 814-863-7044)

The same story is told by ex-DEA agent Michael Levine in an interview in *The Humanist* for September/October 1990. Levine, author of *Deep Cover*, charges the "The CIA was helping put drug dealers in power while friends of mine were dying on the streets of America for ounces and grams." The reason, he says, "...we have consistently chosen drugs over communism."

**THE BIG 'ECONOMIC INTELLIGENCE' PUSH** of the CIA continues to be ridiculed. On June 17 the *Wall Street Journal* quoted retired NSA head LtGen William Odum as saying: "It's the dumbest idea I ever heard of." He asked, if government intelligence agencies got data, to which US company would they give it?

## III Covert Operations

**SOUTHERN AFRICA**—The February-March UN-CLASSIFIED reported on US participation in ongoing Un-

ion of South Africa operations to destabilize the so-called frontline countries of southern Africa. According to United



Nations estimates, these operations in Namibia, Angola, Zimbabwe, Zambia, and Mozambique resulted in over a million and half deaths, ruined economies, and whole populations facing starvation and disease. (See in Required Reading, UNCLASSIFIED, February-March 1991, Sean Gervasi and Sybil Wong, "The Reagan Doctrine and the Destabilization of Southern Africa," in A. George, ed., *Western State Terrorism*). A recent series of articles by John Carlin, South African correspondent for the London (England) *Independent* provides updating and confirmation.

A former South African Defense Forces (SADF) psychological operations officer Major Nico Basson has revealed details of SADF operations in Namibia and elsewhere. He says his unit worked in Namibia in 1989 in a failed attempt to rig the elections against the Southwest African People's Organization (SWAPO) but that this was just a "dress rehearsal" for an all-out drive to control the elections in Angola next year to gain victory for Jonas Savimbi and his UNITA movement, currently funded as a US "covert operation."

In South Africa itself, Basson has identified Operation Agree, a SADF operation to support the Zulu leader Mangosuthu Buthelezi as an alternative to Nelson Mandela and the African National Congress (ANC). A major strategy, besides providing arms to the Zulu Inkatha party activists and promoting tribal and political violence among the blacks, is to present Buthelezi as an autonomous independent leader. Buthelezi's recent US tour appears to be part of that strategy coordinated with US agencies which have collaborated with the SADF for years. The CIA, it will be recalled, set up

ANC leader Nelson Mandela for his arrest and subsequent 23 year imprisonment in 1967.

Basson has been denounced by the South African government. By his own account he has been the victim of beatings, kidnapping, torture and an assassination attempt by SADF's sinisterly named Civil Cooperation Bureau. (See, *The Independent*, June 11, 12 and 13).

**CAMBODIA**—A breakthrough of sorts on the covert, and illegal, support for the Khmer Rouge occurred in England at the end of June. Film makers John Pilger and David Munro (see "Covert Capers in Cambodia," UNCLASSIFIED, October-November 1990) who reported on British Special Air Services (SAS) training of Cambodian guerrillas were being charged with violation of the Official Secrets act for their revelations. However, charges were dropped and the British government, after years of denial, admitted training anti-government Cambodian forces (but not the Khmer Rouge) until 1989.

However, Munro reports to UNCLASSIFIED that the training still goes on using "volunteers" from SAS reserve forces under the direction of MI6, the British equivalent of the CIA.

**NICARAGUA**—Contras are taking up arms again. Elements in the US government argue that Chamorro is too soft on the Sandinistas, and the "re-contras" attacks may be part of the covert action pressure to force her government to take a harder line. Nicaraguan and US sources tell UNCLASSIFIED of air drops and that old CIA assets are "heading south."

## October Update

UNCLASSIFIED's last issue discussed the return of the ghost of October 1980—the story that the Reagan-Bush presidential campaign team in that election year headed by later CIA chief William Casey bargained with representatives of Iran's Ayatollah Khomeini. Casey, in order to prevent the Carter administration from negotiating a release of the US embassy hostages held in Iran, a success which he believed would ensure Carter's re-election, allegedly promised Iran US arms if he delayed returning the hostages until Reagan was president. This issue tries to describe the many developments since then.

### **The Covert Operation To End (literally) All Covert Operations**

The story, of course, is of interest in itself. What concerns the Association, though, and makes the affair relevant to its concerns is the evidence indicating that William Casey and his clients had the active support of a considerable number of CIA operations officers as well as others in the national security apparatus in the alleged audacious scheme to sub-

vert the 1980 US presidential elections by, in effect, holding hostage the US hostages in Iran. In fact, it could be charged that the affair was a rogue CIA operation carried out against the legitimate government of the United States. The man who headed it, arguably acting on behalf of a former CIA director, George Bush, would himself shortly become the Director of Central Intelligence. He then put the people who had taken part in key positions within the national security agencies. Among those who have been named are Gates, Donald Gregg, and Army LtGen William Odum who went on to become the head of the National Security Agency. If this turns out to be true, it will be the strongest possible argument for the position of the Association of National Security Alumni that covert actions and the maintenance of a permanent capability for conducting them, far from being necessary for the national security, instead pose an enormous danger to the legitimate political institutions and the Constitution of the United States and should be abolished.

Rumors about the alleged deal had circulated for years. Establishment opinion dismissed them as the vapors of conspiracy buffs. However, hard research and investigation was going on. Ex-Reagan White House staffer and campaign aide Barbara Honegger was probably the best known of the investigators. Indeed, her public persistence resulted in a



largely successful smear campaign by Republican operatives to undermine her credibility. Other researchers and journalists, though, notably Martin Killian, Washington correspondent of Germany's *Der Spiegel*, Christopher Hitchens of *The Nation*, freelancer Robert Parry, and West Coast filmmaker David Marks, kept plugging away at the story.

They fed clues and sources to Columbia University international relations professor Gary Sick, author of the standard scholarly work on US-Iranian relations in the 1970s, *All Fall Down*. Sick, a now-retired career naval intelligence officer and Iran specialist, had been assigned by the Navy to the National Security Council staff during the Gerald Ford administration and served throughout the Carter years and in the first months of the Reagan presidency. Sick, who for years had refused to believe that the Republicans had cut a hostage deal with the Ayatollah, finally became convinced and revived the affair with his April 15 op-ed in the *New York Times*, "The Election Story of the Decade" (UNCLASSIFIED, April-May 1991).

At first, it seemed that it would only be the election story of the week. An initial flurry of interest highlighted by Parry's April 17 public television *Frontline* special subsided quickly, especially after President Bush, on May 3, angrily responded to reporters' questions with a denial that he had ever been in Paris. The following day, his doctors conveniently announced that he had experienced a heart malfunction and nothing further was heard.

UNCLASSIFIED's enquiry to the *New York Times* produced a response that its editorial board was not then planning to press the issue. An aide to senior editor Les Gelb, who had sponsored the Sick op-ed and followed with his own editorial demand for an investigation, said that Gelb had no immediate plans for further articles on the subject. The next word in the *Times* was a soothing syrup op-ed on May 15 by former Carter White House Counsel Lloyd Cutler, now a high powered Washington establishment lawyer, who contradicted Sick, saying no such thing could have happened.

## **Demos Duck as Foley Folds**

Meanwhile, Sick met with Democratic congressional leaders. With few exceptions they expressed little interest. Speaker Tom Foley (D-WA) finally directed the chairmen of four committees (Foreign Affairs, Intelligence, Judiciary and Government Operations) to look into the affair informally and make recommendations about whether any more serious investigation should take place. From comments made to UNCLASSIFIED by staff members of these committees and other well-placed Capitol Hill observers it is clear Foley expressed little urgency and seemed almost to hope that the chairmen's recommendations would be against it.

The Speaker is said to fear being accused of playing politics before the 1992 national elections—something, obviously, no Democrat should do. He told reporters on June 24 that he saw no need for a formal investigation because "there was no evidence of misconduct on the part of the President"—as if that had anything to do with it, even if it were true—and because many of the witnesses are dead. Foley did say, though, that his decision on whether to ask a

formal investigation "could come within two weeks." Needless to say, there were no audible voices asking for an investigation from Republican side.

According to Robert Morris of the *Village Voice*, which, along with the *Financial Times* of London, has been providing the best consistent investigative coverage of the affair, writing in the July 2 edition of the *Voice*, rebellion is stirring among Democratic congressional staff members over the foot dragging. Several told Morris that Foley's naming of four committees to do the informal inquiry was merely a device to "divide and dilute." Another talked of a "cozy relationship" between leading Democrats and the administration. On the Senate side, Majority Leader George Mitchell (D-ME) is keeping an even lower profile than Foley, if that is possible. Congresswoman Pat Schroeder is quoted as saying, "Everybody is terrified of the issue.... We're talking about treason." (UNCLASSIFIED cannot resist the obvious quote: "Treason doth never prosper. What's the reason? If treason prosper, none dare call it treason.")

## **The (Supposedly Apathetic) Public Is Heard From**

If the political leaders of the United States refused or were reluctant to act, private citizens, many of them frustrated and angered by the utter failure of either Congress or the courts to deal with the crimes of Iran-contra were organizing around the country to force their hands. And they were not without rank and file congressional support.

One citizen activist is Maury Paprin of New York City, head of the Fund For New Priorities. On June 13, the Fund sponsored a colloquium in the Senate Dirksen building in Washington at which ex-hostages Moorhead Kennedy and Barry Rosen presented Congressman Butler Derrick (D-SC) a petition signed by eight former hostages calling for a congressional investigation.

Derrick has secured the signatures of some eighty Democratic House colleagues urging the Speaker to begin formal investigation. Senators Paul Wellstone (D-MN), Brock Adams (D-WA), Alan Cranston (D-CA), and Tom Harkin (D-IA) circulated a Dear Colleague letter identifying themselves as co-sponsors. Sick, Martin Killian, Christopher Hitchens, and Joel Bleifuss of *In These Times*, discussed their investigations in a panel. Morton Halperin of the ACLU, Tom Blanton of the National Security Archives and Marc Raskin of the Institute For Policy Studies, along with Professor William Beisner of American University formed a second panel that examined legal and constitutional issues.

The colloquy got significant press and broadcast coverage. CSPAN presented the entire five hours. The dozens of calls received about the CSPAN broadcast in the Washington office of the Association served to demonstrate the interest aroused nationally. Likewise, the virulent attack on the colloquy by Accuracy in Media's Reid Irvine in the *Washington Times* on June 19 indicated that it had struck a nerve.

On June 17, ABC-TV's *Nightline* threw its not inconsiderable weight into the fray. The widely watched program, relying on interviews with Iranian arms merchant Jamshid Hashemi—brother of the deceased Cyrus Hashemi, sup-



posed to have been one of the principal architects of the Reagan-Bush-Casey 1980 arms deal—and an exhaustive examination of Casey's movements in the summer of 1980, left little doubt that Casey had met Iranian representatives about the hostages in Madrid in July and August 1980.

On June 24, the same day that Speaker Foley demurred, Senator Al Gore (D-TN), called from the floor of the Senate for a formal "independent" investigation of the October Surprise charges. Referring to the *Nightline* broadcast, Gore declared that while the evidence was circumstantial it was "compelling." He went on, "If the allegations are not true, the country needs to know they're not true. If they are true, the country needs to know that as well."

Subsequently, Speaker Foley, according to one report met privately with Congressmen Dante Fascell (D-FL) and Lee Hamilton (D-IN) of the Foreign Affairs Committee to which he plans to assign responsibility for a formal investigation, should he call for one. UNCLASSIFIED finds this alarming. Fascell, who must defer to his fanatic Cuban constituency in Miami, refused to conduct the investigation into Iran-contra-related criminal activity by the now-defunct Office of Public Diplomacy despite recommendations of committee staff and the General Accounting Office. Hamilton, former head of HPSCI and the chairman of the House Select Committee on Iran-contra, was one of the chief architects of the Iran-contra coverup.

## Ben-Menashe's Contribution

For ten days around the Memorial Day weekend, former Israeli intelligence officer Ari Ben-Menashe was in Washington with a heavy schedule of meeting congressional staffers, journalists and others. Ben-Menashe, who claims to have attended the October Paris meetings and to have been part of the small Israeli task force (the so-called Ora Group), that coordinated the arms deliveries to Iran from 1981 to 1984 with the Reagan administration, was blunt and detailed in his account. Congressional staffers who spoke with him tell UNCLASSIFIED they find him convincing and that most of the details of his story check out. Ben-Menashe spoke with UNCLASSIFIED editor David MacMichael for two hours on the night of May 26.

In short, his story is that Israel saw Iran, whether governed by a pro-Western Shah or Shiite fundamentalists, as a necessary balance against the Arab states of the Middle East. Israel believed the Carter administration's allout backing of the Shah was a mistake, that an early adjustment to the Iranian revolution should have been made and that allowing the Shah to enter the US after his overthrow was a gross error, as was the US response to the seizing of the embassy hostages.

He says that the first unofficial contacts with Israel about a covert alternative policy toward Iran were begun by the late CIA operative Miles Copeland in London toward the end of 1979. In January 1980 Robert McFarlane (who Ben-Menashe insists was an Israeli agent since 1978) and Earl Brian, the Reagan crony who figures so prominently in the INSLAW affair (See UNCLASSIFIED, April-May 1991) went secretly to Iran in January 1980 to make arrangements for the first meeting between William Casey and repre-

sentatives of the Ayatollah Khomeini which took place in Barcelona, Spain, in March 1980.

Brian, after serving as Director of Health and Welfare in California under then-Governor Reagan, had travelled several times to Iran as a consultant and had numerous contacts there. (This makes more comprehensible the claim of INSLAW case figure and self-styled former CIA asset Michael Riconosciuto that Brian delivered money to Iran after the October 1980 Paris meeting for payment to Israel. Iran's own dollars, of course, had been impounded by US banks on orders of the Carter administration).

At the Barcelona meeting arrangements were made for the subsequent meetings in Madrid described in the *Nightline* broadcast referred to above. Ben-Menashe says that Robert Gates accompanied Casey to the Madrid meetings. (Gates, according to *Nightline* staff members, denies this and has provided documents—office logs, —etc. to support his denials—UNCL). By this time, he says, the Israeli government was dealing directly with Casey, ignoring the official US representation. Additionally, McFarlane was providing Tel Aviv with up-to-date information on Carter administration plans.

The most startling aspect of Ben-Menashe's account is that he says all the Iranian and Israeli participants assumed until September 1980 that the plan was to get the hostages released early in some manner that would give the credit to the Reagan campaign. In fact, the meeting at the L'Enfant Plaza Hotel with Iranian representatives and McFarlane, Reagan national security campaign chief and later National Security Advisor Richard Allen, and attorney Laurence Silberman, today a federal appeals court judge in the District of Columbia, was to present the plan worked out for the delivery of the hostages to Reagan representatives in Karachi, Pakistan, during the first week of October. For the Iranians (and the Israelis) the October Surprise was to be informed that Casey didn't want the hostages back until after the election.

By this time, Iran and Iraq were at war. Israel's policy was to ensure Iran's survival and to see that it was supplied with the arms necessary to prevent its defeat. The October meetings in Paris were held to deal with the linked matters of arms supply and post-election hostage release. Ben-Menashe says he was present as a member of the Israeli team. His function was to prepare the "address book", that is to get the names and means of contact for those in attendance. French intelligence, he says, took care of the security arrangements for the meetings. Finally, on the evening of October 19, he claims to have been, with other members of the Israeli party, on the top floor (or the seventh floor, he is not sure which or if they were the same) of the Ritz Hotel in Paris in an anteroom outside the main conference room. He saw the Ayatolla Kharubbi, the main Iranian negotiator, arrive and enter the conference room. Shortly afterward he saw William Casey and George Bush together pass through the anteroom and enter the conference room.

Israel soon began sending military spare parts, especially F14 tires, to Iran. This was discovered by US intelligence and President Carter protested this during the visit of Israeli Premier Yitzhak Shamir in December. However, as soon as the Reagan administration was installed, regular shipments began. According to Ben-Menashe, the amounts were in the



millions of dollars over the next four years. He says that he travelled frequently with Robert Gates organizing shipments of military supplies. He mentioned going with Gates on several occasions to a US military installation outside Tucson, Arizona, for this purpose. He stated that Pakistani arms dealer Arif Durrani, (See in this issue for status of Durrani's case), inspected the shipments as an agent for Iran to make sure they were in order. The whole operation, he says, was run by Vice-president George Bush.

This arrangement went on without any real hitches until the election of the Labor government in Israel of Premier Shimon Peres. Peres dismissed those who had been handling the shipments under the predecessor government, brought in his own people diverting some of the profits to the Labor Party. This alienated those elements in the Likud Party who had previously benefited. Moreover, by this time Iraq was losing the war, and the US, contrary to the desire of the Israeli military and intelligence services, had begun the tilt to Iraq, providing Iraq with more weaponry and other support than Israel found comfortable.

According to Ben-Menashe, the situation between Israel and the Reagan administration turned hostile in 1985 when the US began to pressure Tel Aviv to adopt policies Israel opposed and used the threat of continuing to build up Iraq to get the Israelis to yield. While Premier Peres was willing to compromise, the Israeli military and Likud were not. It was at this point, too, that the US began to bypass the original arrangement to use the newly-developed Secord-Hakim-North weapons delivery system to Iran. This, according to Ben-Menashe's account, caused a decision within the Israeli security services to expose the Secord arrangement.

The means chosen, says Ben-Menashe, was insertion of the famous article about the arms sales in the Lebanese magazine *Al Shirrah* and publicizing it throughout the West. In fact, Ben-Menashe claims that he, himself, had the responsibility for placing the article. This was done after *Time Magazine* refused to print the leak previously given it by Israeli intelligence.

(UNCLASSIFIED has few means for checking the accuracy of Ben-Menashe's account. He claims he is talking because he was set up in a sting operation by Israeli intelligence and US Customs designed to discredit all those who knew too many details of what had happened between

1980 and 1985. Given the situation of Durrani and the famous "Brokers of Death" sting operation carried out by US customs in 1986 (US v. Evans, et al.) in which elaborate and highly public efforts were made to incriminate numbers of US, Israeli and European arms dealers for selling weapons to Iran, this seems plausible enough. UNCLASSIFIED has been able to verify independently the *Time Magazine* detail. Also, Ben-Menashe's presence in South America and his dealings there with the Chilean arms broker Carlos Carduen have been independently confirmed to UNCLASSIFIED by a number of sources. He has also been the subject of intense journalistic investigation in Australia where he now resides, and is regarded as a solid source. Moreover, as noted above, Senator Alan Cranston is relying, at least partly, on Ben-Menashe's information in his call for investigation of charges made against Robert Gates).

### **Is the Fix In?**

UNCLASSIFIED has information that the Bush administration is moving to defuse the situation and head off any congressional investigation. The key is to have Israel discredit Ben-Menashe.

The process appears to have begun. *Time Magazine*, (Nancy Gibbs, "Con Man Or Key to a Mystery," July 1, 1991, 24-25) calls October surprise allegations "outlandish" and quotes Israeli intelligence officials as saying Ben-Menashe was a low-level code clerk who served "only at a word processor." The same source said he had been found to have "serious personality disorders." *Time* concludes he is "a practiced poseur." Meanwhile, Ben-Menashe, now in Australia, has been cut off from his Israeli intelligence contact since mid-June. On June 29, Israeli Defense Minister Moshe Arens met with President Bush in the White House and reportedly promised that in return for US concessions on Mid-East regional arms policy, Israeli settlements on the West Bank of the Jordan, plus economic aid, Israel will take measures to silence and discredit Ben-Menashe, refuting his charges.

Bush will be spared the dreaded investigation. The Democratic "leadership" is spared the agony of conducting it—and probably gets assurance Bush will not veto the intelligence authorization. Another *quid pro quo* is that Gates will be confirmed.

Something for everyone except the American people.

### **Missing Tapes—Does This Sound Familiar?**

The name Cyrus Hashemi frequently arises in discussions of October Surprise. Hashemi died mysteriously of a sudden onset of "leukemia" in 1986. This was shortly after he had played a key part in entrapping the victims of the "Brokers of Death" sting previously mentioned. Hashemi had been continuously bugged by US Customs since October 21,

1980. The tapes, which were turned over to the FBI, should reveal a great deal. The FBI says they have been lost.

Congressman Peter Kostmayer (D-PA) says this is "unacceptable" and is demanding that the tapes be found and turned over to Congress at once. Speaker Foley's national security aide, Mike O'Neill, explained to the *Village Voice* that the Speaker hasn't gone after the tapes because, "We're not doing an investigation. We're just collecting information." For what it is worth, UNCLASSIFIED points out that O'Neill was until two years ago the staff chief of the House Permanent Select Committee on Intelligence. He is also a career CIA officer.

Hashemi's lawyer, William Wachtel, has transcripts of the tapes. He says, though, that he has been "threatened" by the CIA if he reveals anything. He will not do so unless and until he is served a subpoena.



## The Cat Out of the Golfbag

On Sunday, June 16, President Bush was in Santa Monica, California, for, among other things, a round of golf with his old boss, Ronald Reagan. Reagan was asked about the October Surprise reports. He denied that his campaign had negotiated to delay the return of the hostages. Oh no, he said, we were trying to get them set free.

At this frank admission that the contacts so absolutely denied by President Bush had taken place, the reporters asked for details. The ex-president told them, "I did some things...but some of those things are still classified." He did not explain how actions undertaken by him while a private party, albeit a candidate for office, could be classified.

Bush, who, to his credit, did not have Reagan shot on the spot, said that he would now support an investigation, "but not a billion dollar witch hunt."

## Required Reading

**The Praetorian Guard**, John Stockwell, South End Press, 1991, 205 pages, Paper. \$11.00.

John Stockwell's unique insight into the role the United States Government plays in world affairs is apparent in his new book. He draws on many of his past lectures as he focuses on this role in the new world order.

The book begins by defining the scope of the problems and issues confronted by the United States as it deals with the radical changes in eastern Europe and the possibility of internal conflict in the Soviet Union. He points out the tendency of the US to seek military solutions and explains why the US regularly goes to war in order to maintain its dominance. This is a personal document, too. Stockwell explains his transformation from dedicated CIA officer to peace activist and crusader for human rights and the environment.

He sees the culture of the United States as militaristic and describes how it uses economic destabilization on a global basis as a tool of foreign policy. He applies his analysis to secret wars waged by the US in the Third World—in Angola, Nicaragua, Indonesia, Chile, Korea, Vietnam and Cuba. He also deals with the emerging (and future) US military role in "drug wars." Stockwell looks back at the Kennedy assassination in the context of his global analysis and develops some interesting theories and scenarios.

The author devotes one chapter to the domestic impact of the US imperial policy, describing CIA penetration of academia and the passage of new laws to support the government's growing use of covert operations techniques here at home. In that chapter he describes the creation of the Association for Responsible Dissent (ARDIS) in 1987.

ARDIS was the predecessor of the Association of National Security Alumni. Composed of former members of the CIA and other national security agencies already known for their opposition to covert operations abroad and at home, the immediate purpose of ARDIS was, in the atmosphere of

Iran-contra, to use their credibility as veterans of the national security system to challenge those seeking the presidential nomination in 1988 to take a stand against covert operations and executive abuse of the intelligence services.

Unfortunately, the author uses the history of ARDIS to suggest that its dissolution in 1989 was a possible result of government penetration of the organization and manipulation of some of its members. He declares that some of its board members proposed "irresponsible, reprehensible...and illegal" activities, proposed defrauding the government and wrote "poisonpen letters" to potential funders. He was forced, he says, to close down the organization.

This is a very good book up to this point, but the reviewer, as one of the founders and board members of ARDIS, must take issue with his account. I was keenly aware of what went on in the organization and I never witnessed actions that could be described as irresponsible, reprehensible or illegal. True, ARDIS was made up of strong minded individuals and there was not always total agreement on goals or methods in particular cases. In my opinion, it was Stockwell's own reluctance to share authority and responsibility that led him to break with the organization, an event that saddened me personally. Incidentally, contrary to his assertion, Stockwell did not "close the association down lest it lead to a major scandal." He resigned following a reorganization voted by the board of directors and claimed that he had personal title to the name ARDIS. The rest of the members chose not to dispute his claim and simply selected the current name, the Association of National Security Alumni.

Like John Stockwell, we have the goal of opposing covert action and the abuses of the national security state. We support John Stockwell in our common effort and urge UNCLASSIFIED subscribers to buy and read *The Praetorian Guard*. The author's recollection is incorrect on ARDIS, but his book is otherwise excellent and thought-provoking.

— Reviewed by Verne Lyon.

### UNCLASSIFIED CLASSIFIEDS

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**The CIA: A Forgotten History, US Global Interventions Since World War 2**, by William H. Blum. Zed Books, Ltd., 1987. \$15. Write William H. Blum, 1531 N. Fuller Ave., #12, Los Angeles CA 90046. (\$3.00 from each sale goes to the Association of National Security Alumni).



# Unclassified

Newspaper of the Association of National Security Alumni — Vol. 3, No. 3. June-July 1991

## Restatement of Principles

Two years ago, in the second issue ever of UNCLASSIFIED, the Association described covert operations and explained its opposition to them.

"These operations," we wrote, "include secret conduct of or support for military and paramilitary operations in foreign countries, terror, assassination, kidnapping, torture, sabotage, black or gray propaganda, and the use of 'plausible denial' to conceal these activities from the American public.

"On the basis of professional experience, the Association's members have concluded that covert actions are counterproductive and damaging to the national interest of the United States.

"They are inimical to the operation of an effective national intelligence system, corruptive of civil liberties, including the functioning of the judiciary and a free press. Most importantly, they contradict the principles of democracy, national self-determination and international law to which the United States is publicly committed."

In the two years since these words were written, the Association has, we think, provided convincing evidence of their truth. However, nowhere have we heard the point made so eloquently and mordantly as in the statement opposing continued military and "intelligence" assistance to El Salvador made by former United States Ambassador Robert White during his April 10, 1991 appearance before the Western Hemisphere Subcommittee of the House Foreign Affairs Committee.

(See *Ambassador White Speaks Out* at right.)

## Ambassador White Speaks Out

Former Ambassador to El Salvador, Robert White, told a congressional committee on April 10, that "the United States bears a share of the responsibility in inflicting on the people of El Salvador a military that massacres its own citizens and enjoys total immunity for its outrages." He went on to say (and UNCLASSIFIED quotes him at length):

"This responsibility of the United States is not limited to supplying weapons. During the investigation of the murder of the Jesuits, the Washington Post and the Lawyers Committee on Human Rights, among other sources, reported that a group of CIA officers share a building with the Na-

**"It would seem unrealistic to expect the Salvadoran military to place themselves under the law when we have taught them that the rewards of a U.S. connection are for those who hold the law in total contempt."**

tional Intelligence Directorate (DNI), the Salvadoran military intelligence agency. These CIA agents routinely attend DNI meetings. On November 16, 1989 a junior Salvadoran officer interrupted the DNI meeting to report the death of the Jesuits. Those in attendance 'cheered and clapped.' When asked if CIA agents were present at the November 16 meeting, Ambassador Walker told a group of American Jesuits, 'I have asked the question and they tell me no.' I am sure the Jesuits had no trouble in comprehending why Ambassador Walker phrased his response in such a careful manner.

"For the CIA to participate in the intelligence deliberations of another government is a highly dubious practice, reminiscent of our Vietnam experience. In the first place, no truly sovereign government would tolerate the presence of foreign observers at such sensitive internal meetings. Secondly, our presence and participation in these meetings would appear to make our government an accessory to the policies and actions of the Salva-

doran military, in somewhat the same manner that we were complicit in the policies and actions of another Central American military, I speak of Panama.

"In Panama, the name of General Manuel Noriega became synonymous with corruption and brutality. It was a secret from the American people that General Noriega was an asset of the Central Intelligence Agency but it was not a secret from the officers of the Panama Defense Force (PDF). To the contrary, the power of Manuel Noriega to take over control of the PDF related directly to the perception by his fellow officers that he was the chosen instrument of our intelligence community. Without the CIA connection, de-



cent officers in the PDF might well have taken matters into their own hands early on and successfully ousted Noriega. These officers knew that Noriega was a drug trafficker, and they knew that the U.S. government knew. They concluded therefore that Noriega and his policies reflected the priorities of the U.S. government.

"There is no exact parallel to Manuel Noriega in the Salvadoran armed forces. Yet, if you seek a reason why the Salvadoran military have seldom taken congressional concerns about human rights violation seriously and have never tried or convicted any officer for any crime, you might well query some Salvadoran captains and majors about the relationship which exists between the CIA and certain senior military officers whose reputation for cruelty and barbarism sets the worst possible example.

It would seem unrealistic to expect the Salvadoran military to place themselves under the law when we have taught them that the rewards of a U.S. connection are for those who hold the law in total contempt." (White's whole statement can be found in *International Policy Report*, Center for International Policy, Washington DC, April 1991. Reports are available for \$1.50—20 or more \$.50 each—from Center for International Policy, 1755 Massachusetts Ave., NW, Suite 324, Washington DC 20036)

White, a career diplomat, writes from bitter experience. His statement supports the declarations of former Salvadoran death squad member Cesar Vielman Joya Martinez, with whose case UNCLASSIFIED readers are familiar, that US advisors were attached to the Salvadoran army unit to which he belonged.

## The Association's Modest Proposal

Recently, Association Washington Director David MacMichael served as the United States delegate to the International Peoples Tribunal on impunity for crimes against humanity in Bogota, Colombia. He argued, and the Tribunal, which reports officially to the United Nations, incorporated in its findings, that the United States advisory and training relationship with the military and intelligence organizations of the countries of Latin America do, as White points out, contribute to the commission of these crimes and involve the United States both legally and morally in responsibility for them.

The Tribunal recommended that the Latin American countries prohibit the entry of foreign military training and advisory missions and refuse to permit the maintenance of "intelligence stations" as part of diplomatic missions.

The Association strongly recommends that the United States adopt a policy of refusing to send military missions abroad and abolish, in accordance with the recommendations of Senator Daniel Moynihan's (D-NY) "end the Cold War" legislation (see UNCLASSIFIED, Vol. 3, No.1, February-March 1991), the insertion of CIA stations in US embassies.

It should be possible to negotiate international agreements by which countries would neither send nor receive military missions nor permit other than strictly diplomatic officers to be present in embassies. Experience shows that military and intelligence representation tends to exacerbate the tendencies in the host countries for militarism and repression. Recent events in the US strongly indicate that the same tendencies here are likewise strengthened by the links established with repressive military and intelligence apparatuses abroad.

(Note: On June 26, the Bush administration announced the resumption of military assistance to the Salvadoran government. The aid had been suspended in reaction to the Jesuit murders. The resumption was justified on the ground that the insurgent forces in El Salvador have acquired Soviet-made SA-16 anti-aircraft missiles to defend themselves against US-supplied government bombers and helicopters flown by the forces which murdered the Jesuits. Obviously, defending one's self against air attack is terrorism, or close to it. Thus, President Bush really had no choice but to start sending the weapons again—or so he argues).

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Unclassified is the publication of the Association of National Security Alumni.

Published bimonthly. Editorial office: 2001 S Street NW, Suite 704, Washington, D.C. 20009; 202-483-9325 FAX 202-483-9314.

Editor: David MacMichael  
Subscription Manager: Carl Levan, Production Supervisor: Tony Naegle.

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UNCLASSIFIED has used many of its pages over the past several issues on the post-Iran-contra attempts of Congress to deal with the problem of covert operations. The question is important in itself, taken as a whole or looked at in its pragmatic, ethical or constitutional aspects, since it deals with the objectives, i.e., the ends, of our society, the means we are prepared to use to attain those ends, and, finally, the political regulation of the process of

choosing ends and means (objectives and methods)—the legal and constitutional questions.

It seems to UNCLASSIFIED that President Bush's November 16, 1990, veto of the 1991 intelligence authorization bill was a watershed event, an extreme and even brazen denial of any legal or constitutional power in Congress to control or in any significant way regulate or share in the selection of goals and methods for the conduct of foreign

policy. The veto has finally, it appears, forced a very reluctant Congress to respond—in some ways forcefully, in others timidly—to the executive's challenge.

This issue of UNCLASSIFIED is devoted largely to a discussion of S1325, the "Intelligence Authorization Act, Fiscal Year 1991" reported by the Senate Select Committee on Intelligence on June 19 (legislative day June 11) 1991. Without an understanding of the ongoing,

and now, we believe, intensifying legislative-executive, constitutional struggle over the sharing of control over foreign policy formulation and implementation on the question of covert action, it is impossible for us as citizens either to comprehend what is going on or to hope in any way to influence the outcome. UNCLASSIFIED sees its role as trying to provide its readers with that understanding. We welcome your comments on our interpretation.

## Oversight—The Intelligence Committees Try Again

Congress still has not been able to pass an intelligence authorization some eight months after President Bush vetoed the 1991 bill in November. The lower house, to be sure, passed its version, HR 1455 (See UNCLASSIFIED April-May 1991), but that included no mention of covert operations or oversight. Clearly, it was intended as a non-controversial stopgap to deal with the anomalous situation in which, with the fiscal year 1991 almost over, the president is spending appropriated funds for which there is no authorization as required by the National Security Act. (A reliable congressional source explained to UNCLASSIFIED that to avoid the obvious legal and constitutional problem this poses, the administration has been careful not to claim *officially* that he has a right to do this. Likewise, the intelligence committees have been careful not to denounce *officially* the fact that the president is spending the appropriated funds without the legally required authorization. This has prevented an immediate crisis but at the cost, perhaps, of setting a disturbing precedent).

### Oversee No Evil, Overhear No Evil

In mid-May the House Permanent Select Committee on Intelligence (HPSCI) reported out its 1992 authorization, HR 2038, which again included no oversight provisions or discussion of covert operations. The very brief bill—six pages long—only states in its final section 402, "Restriction on conduct of intelligence activities," that "The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States."

Arguably, this all encompassing boilerplate ought to do the job. Former HPSCI chairman Anthony Beilenson rebuked an interviewer recently who inquired as to how the committee dealt with illegal covert actions, declaring angrily, "We don't engage in any illegal activities."

Nevertheless, it is disconcerting to see HPSCI twice within a few months simply ignore last year's burning issue of congressional oversight. As was the case last year it will be left to the same non-HPSCI member, Barbara Boxer (D-CA), to call the question. According to a Boxer staff member, she is preparing an updated version of the defeated amendment she proposed last fall. No details are available, but UNCLASSIFIED assumes Boxer will again insist that Congress has the right and duty not merely to be informed of planned covert actions by presidential findings but to approve or disapprove them.

### McCurdy Lies Low

One surprising aspect of HPSCI's low profile legislation is that the departure of the passive, some would say subservient, former chairman Tony Beilenson, in favor of the ambitious Dave McCurdy (D-OK) plus appointment to the committee of five certifiable liberal Democrats, including Ron Dellums (D-CA) and David Bonior (D-MI), both denounced by administration sources as anti-intelligence, (UNCLASSIFIED, February-March 1991) was supposed to presage a tough, confrontational stance on the part of HPSCI. McCurdy declared that the committee had not been "aggressive enough" and said his goal was "to re-establish our credibility as an oversight committee." It is, perhaps, too early to judge, but McCurdy has hardly come out swinging.



According to HPSCI chief counsel Mike Sheehy, the absence of an oversight section in HR1455 (the 1991 bill), was due to the fact that the Senate Intelligence Committee negotiations with the White House on the matter were not heading in a direction agreeable to HPSCI, and the committee chose not to act until it could see the outcome. When it was learned that the Senate Committee had chosen to treat the matter in its 1991 version, the House group decided also to leave oversight out of its 1992 version pending the fate of the 1991 bill in conference. Sheehy assured UNCLASSIFIED that HPSCI will make its views known in conference. Further, he says, Chairman McCurdy expects to express his own opinions on the question of oversight and covert operations publicly after the mid-summer congressional recess.

## **Some Surprising Senate Shifts**

The Senate Intelligence Committee finally reported out its proposed version of the 1991 bill on June 19, S1325. Usually considered more considerate of presidential and intelligence community sensitivities and claimed prerogatives

than HPSCI, the Senate body, surprisingly, showed more interest than its sister committee in holding executive feet to the fire on oversight.

Ten of the bill's 40 pages deal with oversight (Title VI). However, the bill ties one hand behind its back at the outset by repeating, as did its vetoed predecessor, the words: "Nothing in this title shall be construed as requiring the approval of the intelligence committees as a condition precedent to the initiation of any significant anticipated (*sic*) intelligence activity."

This said, a close reading of S1325 and the accompanying report (S. Rept. 102-85) shows the Senate Intelligence

Committee taking a much tougher approach to the matter of covert operations and oversight than ever before. Whether this is a reaction to the president's cavalier veto of the first 1991 bill or an indication that last year's debate and public pressure actually caused a rethinking cannot be known. However, a comparison of not only the bill itself but the explanatory language and tone of the accompanying report with their predecessors reveals important differences in approach and attitude. This is a significant improvement, UNCLASSIFIED believes. There is, though, when dealing with covert operations the unfortunate choice made to amend existing legislation (law) to make it congruent with presidential practice and definitions as expressed in presidential executive orders (non-law) rather than insisting that practice be brought into conformity with law.

Even here, though, the objective is defensible. For example, by placing in law the otherwise regrettable executive order claimed authority for the president to use any executive agency for covert actions as opposed to current law (the 1974 Hughes-Ryan Amendment to the Foreign Assistance Act of 1961) which authorizes only the CIA to be so employed, the Senate Committee wants to make sure that the president can be held responsible for covert actions in which he uses agencies other than the CIA. As the Report puts it, this "gives statutory force to a policy that has previously been a matter of Executive discretion." By the same token, the proposed bill places the onus on the president personally to keep the intelligence committees fully informed of US intelligence activities, both ongoing and anticipated. Currently, the law puts the obligation on the Director of Central Intelligence (DCI).

The proposed law also shifts from the DCI to the president the obligation to report any illegal intelligence activities to the committees. Moreover, where reporting of illegalities currently must be done "in a timely fashion," this phrase does not appear in the new bill, and the Report says its intent is that the president inform the committees "whenever a probable illegality is confirmed under the procedures established by the President."

In all this there is, of course, a certain charming naivete or, depending on one's point of view, a chuckleheaded and far from charming credulousness. Surely, no one over the age of ten and with a claim to mental competence can envision a President of the United States discovering that some covert operation in which his minions are engaged violates the statutes or Constitution of the United States and hastening to inform the chairmen of the committees. And, of course, the Report allows "that the President may require time to investigate an activity to determine that a probable violation has occurred before reporting to Congress." One can almost hear the shredders whirring.

Once again, though, there is, however feebly expressed, a new sense that it is the president who is to be held responsible. This appears again in the deletion of the qualifying clause in subsection 501(a) of the current law which imposed obligations on all parties only "[t]o the extent consistent with all applicable authorities and duties, including those conferred upon the Executive and Legislative branches of Government." The report acknowledges that "Recent experience indicates that legislation qualifying its terms by reference to the President's constitutional authorities may leave doubt as to the will of Congress and thus invite evasion." How true.

It is section 503, "Presidential Approval and Reporting of Covert Actions" that is of most interest to the Association. The Association's position continues to be that covert operations should not be employed at all. Its alternative position is that if covert operations are used, congressional approval is required. Neither position is taken by the Senate Committee. However, the language of the report, as remarked earlier, does indicate a significant shift from the traditional acquiescence in (indeed, enthusiasm for) executive use of covert operations and rejection of the notion that Congress could or should exercise any real control or had any rights



beyond that of being informed of what had been decided and what was going on.

The report distinguishes between the president's nearly unrestricted power to use executive agencies to gather information and the limits which Congress can place on his use of covert actions that go beyond information gathering. "Congress," it says, "has the constitutional power to refuse to appropriate funds to carry out covert actions and may impose conditions on the use of any funds appropriated for such purposes." Congress intends not only to be informed but to have a say in the conduct of operations, to ensure "that covert actions are conducted with proper authorization in the national interest as determined by the elected representatives of the American people—the President and the Congress...." Again, this is a significant change in tone and a bold assertion of congressional power that approaches, if it does not reach, the desideratum of requiring prior congressional approval before the executive can act.

## **Findings Keepers**

The section of the report dealing with the much-mooted question of the presidential finding that must be presented to the committees is something of a disappointment. It establishes that a covert action may not be authorized unless the president "determines such activities are necessary to support identifiable foreign policy objectives of the United States and are important to the national security of the United States." This gives far too much discretion to the executive and once again shows a measure of senatorial naïveté. Naturally, the president, if he wishes to do something

in this line, will declare it necessary to the foreign policy and important to the national security. Nowhere is it stated that he must convince Congress that this is the case.

Until now, under the Hughes-Ryan Amendment, the finding had to show only that the operation was important to national security. This at least gave the impression that covert actions were essentially defensive in nature, undertaken to ward off significant threats in exceptional circumstances. The addition of the requirement that they be necessary to support foreign policy objec-

**Any National Security Council staffer worth his clearances can contrive plausibility before as well as after the fact. In any event, it hardly matters what the finding say so long as the committees deny themselves the power to reject even the most absurd presidential representations.**

tives, far from being a restriction, is an invitation to employ covert methods more freely than in the past. The committee report boasts that the word "identifiable" should prevent an overly general description of the foreign policy objective and "that the foreign policy interests to be served by a covert action are well-thought out prior to approval and not contrived after the fact."

Once more it seems the senators who wrote this report are divorced from experience. Any National Security Council staffer worth his clearances can contrive plausibility before as well as after the fact. In any event, it hardly matters what the finding says so long as the committees deny themselves the power to reject even the most absurd presidential representations.

Five conditions are imposed in addition to the foreign policy and national security determinations. The first requires that the finding be in writing unless immediate action is necessary and time doesn't permit preparation of a written finding. It is hard for UNCLASSIFIED to imagine a situation, with the stenographic resources available to the White House, where the presidential will could not be almost instantaneously put on paper. The purpose, though, reflects healthy mistrust. It is expressly to prevent some presidential flunky from claiming to have received oral authorization.

The second condition prohibits retroactive findings. The third requires that the finding identify any executive agency or government contractor other than the CIA that will participate in other than minimal routine fashion in the proposed activity. Regrettably and, in UNCLASSIFIED's view, probably illegally, the law would require, as explained in the report, that employees and contractors obliged by their agencies or employers to take part in a covert action be subject to the regulations of the CIA.

## **Third Party Time**

The fourth condition addresses the matter of "significant" third party or third country participation in a US covert action. Requiring that requests to third countries or parties for participation be included in a finding was the principal reason given by President Bush for vetoing the 1991 authorization bill last November.

The Senate Committee here is inordinately careful of presidential sensibilities. It tiptoes around the issue and by insisting that the reporting requirement only includes "significant" participation opens the door to endless future wrangles about what constitutes significant. Not only that, the committee states specifically that the finding need not name the country(ies) or party(ies) involved, only if their participation is contemplated. However, the committee is at pains to make clear that it is a presidential responsibility "to approve specifically the use of third countries or private parties outside normal U.S. Government controls to implement a covert action in any significant way." Once again, the intent, clearly, is to make the president himself directly and personally responsible for the covert actions he initiates.

## **Covert Actions—Does or Does Not the Law Apply?**

The fifth condition, though, is a real disappointment. Certainly, Iran-contra Independent Counsel Lawrence Walsh must have read it with disappointment, if not outrage. Ostensibly establishing that a finding may not authorize any action that violates the Constitution or any statute of the United States, it actually appears to grant to the CIA, at



least, a blanket exemption. Let the report language speak for itself:

"...paragraph 503(a)(5) would establish that a finding may not authorize any action that violates the Constitution of the United States or any statute of the United States. This is similar to section 2.8 of Executive Order 12333, which states that nothing in that Order 'shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.' Current CIA policy is to *avoid violation of any federal statutes*

*which apply to covert actions directly or which apply to government agencies in general.*

(Italics UNCL) However,

CIA possesses statutory authorities to carry out its authorized functions that are unavailable to other government agencies. This provision is not intended to require that covert actions authorized in presidential findings need comply with statutory limitations which, by their own terms, apply only to another U.S. Government program or activity....[S]tatutes which may prohibit conduct by private parties may not be applicable to the CIA or other

government agencies because of the absence of the *mens rea* necessary to the offense. For example, the Justice Department takes this view with respect to the Neutrality Act. *In short, there may be covert actions undertaken by the CIA which do not violate U.S. statutes because the statutes themselves do not apply to the CIA.* (Italics again by UNCL)

However, any such case deserves intense scrutiny by the Executive branch, and by the intelligence committees, in their respective reviews of covert actions. It is intended that the intelligence committees will establish procedures to obtain any analysis of the impact, if any, of existing statutes on each covert action as part of their routine oversight functions."

Unhappily, this paragraph gives a whole new dimension to the concept of weasel wording. To say, on the one hand, that covert actions may not violate the laws or the Constitution—a self-contradictory proposition in itself—and then to declare with a straight face that the laws may not or do not apply to the CIA in its conduct of such operations is to mock reason and insult the public. It certainly does explain, though, how a Tony Beilenson can say that US intelligence does not engage in any illegal activities. Pathetic.

## The "Timely Notice" Conundrum

In returning to matters involving the relationship between the president and the committees, rather than the conduct of covert actions *per se*, the report is less slippery and ambiguous. In the section dealing with the contentious matter of how long a period of time can elapse after the initiation of a covert action for which no prior notice was given (no find-

ing presented) and still constitute the legally required "timely notification" by the president to Congress which the National Security Act has required since 1980, the committee again shows some desire to rein in presidential pretensions. The contrast between the fawning and acquiescent language of the report accompanying last August's S2834 and that of the report discussed here is startling.

Quoting from the insolent Justice Department memorandum on this matter of December 17, 1986, declaring that the

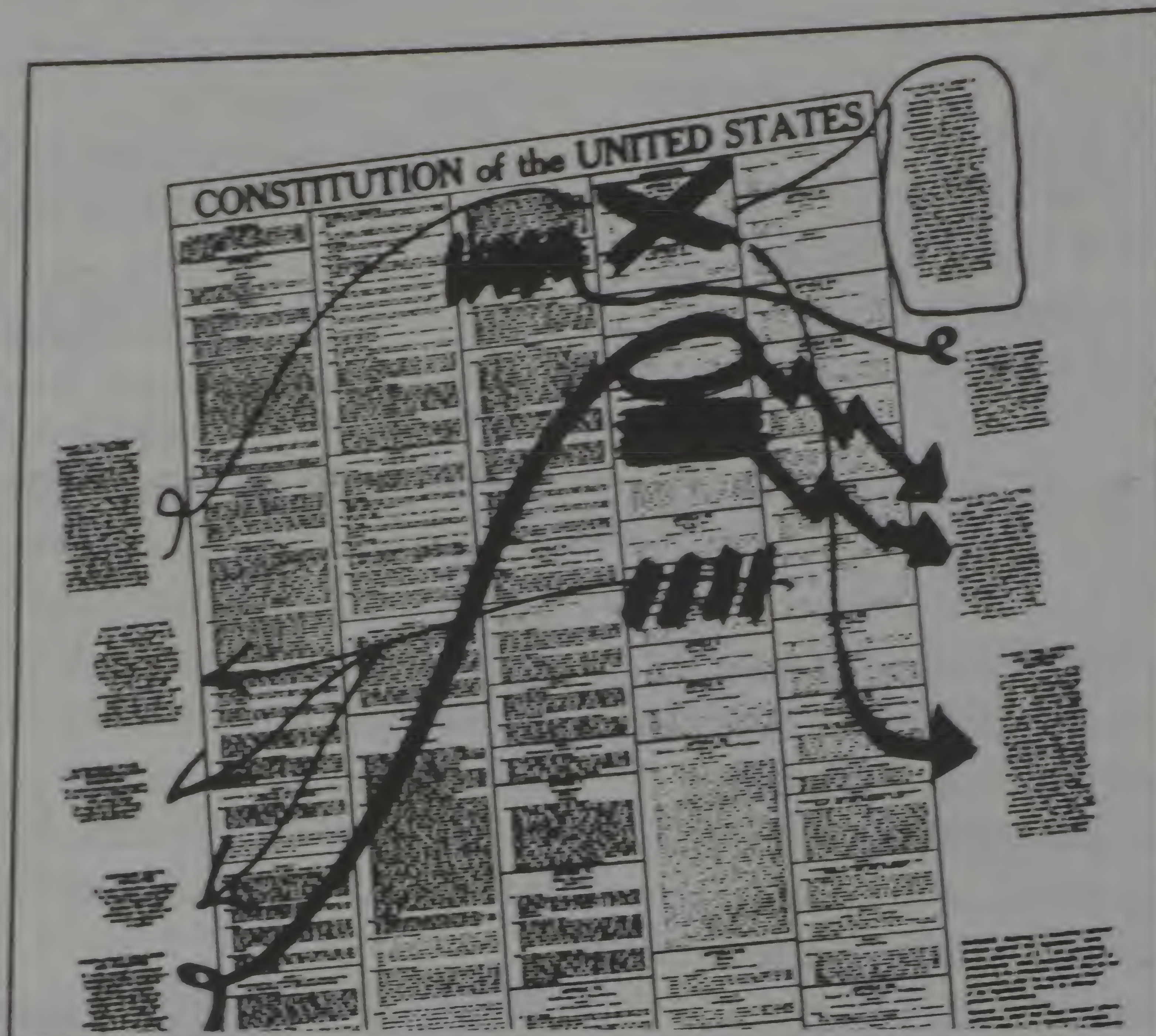
president has "virtually unfettered discretion to choose the right moment for making the required notification," the committee, as it had done before, rejects the interpretation out of hand. It also, though, reprints the text of President Bush's 1990 letter to HPSCI which had asked his views on the Justice Department memorandum.

In the letter Bush quoted the memorandum's "virtually unfettered language" and pointedly did not renounce it. He did say, though, that he anticipated giving prior notice in "almost all instances." Then he concluded: "In those rare instances where prior notice is not provided, I anticipate that notice will be provided within a few days. *Any withholding beyond this period will be based upon my assertion of authorities granted this office by the Constitution.*"

During last year's honeymoon, a swooning committee reported that this now-you-see-it-now-you-don't verbiage was, in fact, a commitment to the within 48 hours standard, hailing it as a major presidential concession. The senators, disabused by Bush's disclaimer of any such understanding in his November 16 Memorandum of Disapproval of the original 1991 authorization bill, make their position clear in language found on page 41 of the current report. They acknowledge the president's assertion of authority but respond:

"The Committee has never accepted this assertion, but recognizes that this is a question that neither the Committee nor the Congress itself can resolve. Congress cannot diminish by statute powers that are granted by the Constitution. Nor can either the Legislative or Executive branch authoritatively interpret the Constitution, which is the exclusive province of the Judicial branch.

"Congress is, however, free to interpret the meaning of statutes which it enacts. While the Committee recognizes that it cannot foreclose by statute the possibility that the President may assert a constitutional basis for withholding notice of covert actions for periods longer than a 'few days,' we believe that the President's stated intention to act under the 'timely notice' requirement of existing law to make a notification 'within a few days' is the appropriate manner to proceed under this provision, and is consistent with what the Committee believes is its meaning and intent."





The White House, according to the *Washington Post* (June 20, 1991, A20), "has some concerns" over the matter of notification.

## **Just What Is Covert Action, Anyhow?**

One thing the bill does is to establish, at least so far as the Senate Intelligence Committee is concerned, a definition of covert action binding both Congress and the executive. To quote: "The term 'covert action' means an activity or activities conducted by, or on behalf and under the control of, an element of the United States Government to influence political, economic, or military conditions abroad so that the role of the United States Government is not intended to be apparent or acknowledged publicly,...." Excluded from this definition are activities which have as their "primary purpose" the acquisition of intelligence, counterintelligence activities, security programs and administrative activities. Also excluded are "traditional diplomatic or military activities or routine support to such activities" as well as the "traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities" and "activities to provide routine support to overt activities...of other United States Government agencies abroad." Prohibited are covert actions intended to influence United States political processes, public opinion, policies, or media."

The report argues that the definition is necessary to resolve differences between the Hughes-Ryan Act and executive branch practice. It states that the CIA and the executive branch in general have interpreted Hughes-Ryan as it suited their preferences through a series of executive order definitions. There is, though, general agreement that paramilitary operations, propaganda, political action, election support and related activities are covert action. Very importantly, the report acknowledges that many activities that are, in fact, covert operations "but for which it would be impractical to seek Presidential approval and report to Congress" are simply not defined as covert action, no findings are made, and are not reported to Congress. Congress, it confesses, has "to some extent...known of and acquiesced in this practice." This is an important admission. It exposes a critical and perhaps fatal weakness in the oversight legislation. It is the president who decides whether or not to present a finding. According to former assistant to the Director of Central Intelligence Victor Marchetti, in a conversation with UNCLASSIFIED, that decision is based on whether the cost of the operation is so large, or the scale or nature of the operation is such that it will draw attention. In other words, whether or not a presidential finding is made or presented to Congress depends on whether or not the executive thinks it can get away without one. Since there is no penalty, or, certainly, no penalty is ever applied, for getting caught there is little incentive to do otherwise).

Thus, in order to regularize the situation, the committee strives mightily, through lengthy and, at times, almost impenetrable argument, to confine its oversight to the narrowest and most incontrovertible set of activities. The essential

characteristic of these is that the role of the United States Government is not apparent or acknowledged publicly at the time the activities are undertaken. "The U.S., in other words, seeks a form of plausible denial to the outside world."

It would be pointless to attempt to describe all the exceptions and points of interpretation with which the report struggles. However, given the discussion in previous issues of UNCLASSIFIED about the growing military role and the fact that a large area of covert operations conducted by US military forces seemed to have been exempted from congressional oversight in last year's legislation, the committee's interpretation of this matter deserves consideration here.

The report shows that the committee has drawn back from its previous position in which the armed forces were given an almost blank check to escape congressional oversight when their activities were conducted at times of "imminent hostilities"—a phrase subject to almost any interpretation. This phrase has been changed to "preceding hostilities which are anticipated" and this is defined to mean that "approval has been given by the National Command Authorities for the activities and for operational planning for hostilities." Moreover, the language emphasizes that these must be under the direction and control of a US military commander.

As UNCLASSIFIED reads this, it means that the old practice of the CIA using Special Forces in its covert activities without benefit of a finding is now prohibited by Congress. Additionally, it is clear that for the military itself to undertake covert activities (except, and this is a very big except, for "contingency" operations to rescue US hostages in foreign countries and to take part in counterterrorist or counter-narcotics operations abroad where the US intends to reveal its participation after the operation) the Secretary of Defense and the Joint Chiefs of Staff must have begun formal war planning. This presumes notification of the congressional armed services committees allowing some form of oversight.

## **Collision Course, Compromise, or Cavein?**

It is not clear when final action will be taken on the 1991 authorization, nor, following conference what the unified bill will look like. Nor, despite the intensive negotiations that have gone on between the committees and the administration, whether President Bush will sign what is produced. UNCLASSIFIED's interpretation of the oversight provisions of S1325 is that they are tougher and more restrictive of claimed executive prerogative than were those in the bill which Bush vetoed in November.

From the speech the president gave at Princeton on May 10, one can guess that he is in no mood to yield. He said: "It is the president who is responsible for guiding and directing the nation's foreign policy. The Executive Branch alone may conduct foreign policy. Our founders noted the necessity of performing this duty with 'secrecy and dispatch,' when necessary.

"....This does not mean that the executive may conduct foreign policy in a vacuum. I have a great respect for Congress and I prefer to work cooperatively with it *wherever*



possible. Though I felt...that I had the inherent power to commit our forces to battle after the U.N. resolution, I solicited congressional support before committing our forces to the Gulf war. So while a President bears special foreign policy obligations, those obligations do not imply any liberty to keep Congress unnecessarily in the dark." (Italics UNCL)

The president went on: "Oversight, when properly exercised, helps keep the executive accountable. But when it proliferates wildly, it can confuse the public and make it more difficult for Congress and the president to do their job properly."

"The chief executive also preserves, protects, and defends the Constitution through the use of the veto power. Six times in my presidency, I have vetoed bills that would have weakened presidential power. In one case, for instance, (Here Bush spoke directly to the veto of the intelligence authorization—UNCL) Congress wanted to make the president disclose a wide variety of sensitive diplomatic contacts and discussions, as well as private discussions with the Executive Branch—and would have threatened to impose criminal sanctions on a wide range of normal diplomatic activities. I noted in my veto message that, 'The result would be a dangerous timidity and disarray in the conduct of U.S. foreign policy. Such a result is wholly contrary to the allocation of powers under the Constitution.'"

In this little-reported address at Princeton, Bush first sneered at Congress—"I would not keep [it] in the dark unnecessarily"—and then threw down the gauntlet. He will use the veto to defeat any legislation he sees as diminishing absolute presidential power over foreign policy. If the Senate intelligence authorization bill is the challenge to presidential pretensions it appears to be then another veto is possible. This would bring on, unless Congress caves in completely, the constitutional confrontation the committees have sought to avoid by not publicly challenging the president's spending the intelligence budget for fiscal 1991 without benefit of the legally required authorization.

**George Bush: "Six times in my presidency, I have vetoed bills that would have weakened presidential power."**

Senate chairman David Boren

clearly is concerned that during the upcoming conference on the authorization bill the newly appointed and as yet to be heard from liberals on HPSCI—Delums, Bonior, et al.—will strengthen congressional claims to the point where another veto will bring on a clash with the administration. He has stated publicly that he is "committed to working with the president during [the]...conference" to prevent this. (Washington Post, June 20, 1991, A19)

## Gates Gate

On May 14, President Bush announced he had chosen Deputy National Security Advisor Robert Gates as Director of Central Intelligence, the new head of the CIA. This was a week after the resignation of William Webster, and there was speculation that the delay was due to White House negotiations with key senators. (Norman D. Sandler, "Bush Taps Gates To Head CIA," UPI, May 14, 1991). Bush himself, according to the *Washington Post* front page story on May 15, referred to talks with members of the Senate Intelligence Committee and pronounced himself "very, very pleased....All will be well."

If this was the strategy, it had early success. In 1987, President Reagan had nominated Gates, then deputy director of the CIA, to succeed the deceased William Casey. The nomination was opposed by senators suspicious of his role, or lack thereof, in Iran-contra. He had helped prepare false testimony for Casey and, as deputy director, had shown, according to the testimony, insufficient interest in finding out what was going on even as the evidence of wrongdoing was called to his attention. In the face of hard questioning then, Gates voluntarily withdrew his nomination. However, the senatorial consensus as reported in the media after Bush announced his choice was that Gates had "matured" and "gained experience" and was now totally acceptable. Even Senator Arlen Specter (R-PA), his most implacable opponent in 1987, appeared on ABC's *Nightline* to say that he would support the nomination.

One school of thought, to which UNCLASSIFIED belongs, had it that Bush, by nominating Gates, was following

the pattern he had shown in selecting the late John Tower for Secretary of Defense and Donald Gregg for Ambassador to South Korea. These were loyalists who had protected Bush during Iran-contra and deserved reward. Just as important, getting them through the confirmation process, in which questions about Iran-contra and Bush's relation thereto were bound to come up, would allow, as the Gregg case, especially, showed, the administration to claim that the fact of confirmation had settled the matter and absolved Bush. Senator Dennis DeConcini (D-AZ), who planned to quiz Gates on Iran-contra during hearings, sensed little support in the Senate for that approach. "People," he said, "just want to put [Iran-contra] away." Arlen Specter argued that Iran-contra had been "investigated enough" and that the Gates confirmation hearings should not be used to reopen it. (*Washington Post*, May 15, 1991, 1A).

Finally, Bush seems to be challenging congressional Democrats by appointing controversial figures and daring them to do anything about it. He sees this, too, as a function of his view of presidential power. In the speech at Princeton on May 10, previously cited, he chided Congress for daring to take "aggressive action against specific presidential powers, including the power to appoint or remove employees who serve at the president's pleasure."

Yet, as UNCLASSIFIED goes to press six weeks later, not only has Gates not been confirmed, but his nomination has not yet been officially sent to the Senate. At the earliest, according to Senate Intelligence Committee staff, hearings will not be held until after July 15. In hindsight it appears



that Bush would have been wise to rush the nomination through because opposition has built up rapidly. Interestingly, much of it seems to have come from within the CIA itself. According to one well-connected source, Agency officers who know of Gates's role in Iran-contra were dismayed at his nomination. They believed that his confirmation hearings would reopen Iran-contra. Said one, "Why

didn't Bush just go ahead and name Don Gregg?"

Moreover, Gates has enemies within the CIA who regard him as a self-serving sycophant rather than a "true Agency man." Evidence for this opposition appeared in the *Washington Post* (Sunday Outlook, June 23) in an op-ed, "The See-No-Evil CIA Nominee," by old CIA hand Tom Polgar.

Polgar, the former Saigon station chief

who, improbably, was the chief investigator for the Senate Select Committee on Iran-contra, did a classic slash and burn job on Gates. He sneered, "...Gates earned a reputation as an able staff officer, outstanding briefer..., reliable subordinate and a non-competing deputy. These are qualities much sought after in Washington, particularly during periods when management is valued more highly than leadership." Polgar concludes, "...what kind of signal does his renomination send to the troops in the intelligence commu-

nity? Live long enough and your sins will be forgotten? Serve faithfully the boss of the moment, never mind integrity?"

There may be more to the rise of opposition within and without the CIA to Gates than mere professional animosity or fear of reopening Iran-contra wounds. Gates's alleged own role in the October Surprise affair is now being discussed.

President Jimmy Carter's deputy national security adviser, David Aaron, suspects that Gates was one of the disloyal national security staff members who were reporting on Carter's attempts to secure the release of the hostages to the Reagan-Bush 1980 campaign staff and thus helping in the sabotage of those attempts. "Gates was my assistant for some time," says Aaron. "...Nonetheless, he became not only a favorite of Bill Casey's but, as you now see, is about to be named the head of the CIA going from the Bush White House." Bob Woodward, in *Veil*, says that what attracted Casey to Gates was the latter's willingness "to bend the rules." (Robert Morris, "Behind the 'October Surprise,' Village Voice, May 21, 1991).

Ari Ben-Menashe, the former Israeli intelligence officer who claims to have been part of the Israeli team that negotiated the 1980 October Surprise with Iran, told UNCLASSIFIED in a personal interview that Gates was not only a key figure in the illicit negotiations but had thereafter worked with him to coordinate the delivery of billions of dollars worth of US arms to Iran. Gates denies this.

The public may be tired of Iran-contra, but increasingly the October Surprise allegations have produced popular demands for investigation. (See *October Update* in this issue). Intelligence Committee member Senator Alan Cranston (D-CA) has publicly referenced Ben-Menashe's statements as his reason for requiring a delay in Gates's confirmation hearings to allow further investigation.

## UNCLASSIFIED UPDATES

### *I Shadow Justice*

**INSLAW**—On May 8 the Justice Department's appeal of the verdict finding it guilty of illegally using the INSLAW Company's computer software in federal bankruptcy court in 1988, a verdict upheld on first appeal in US district court in 1989, succeeded. Reversal came on a technical ruling by Judge Stephen F. Williams, circuit judge of the US Court of Appeals, that the case should not have been in bankruptcy court in the first place. The ruling means the whole case (for details see UNCLASSIFIED April-May 1991) must be retried again in US district court. INSLAW president William Hamilton is determined to fight. "There is no way in the world that the Justice Department is going to be able to get away with this," he said.

Following the verdict, rumors flew in Washington legal circles about high level administration pressures. An attorney close to the district judge who had ruled in INSLAW's

favor in 1989 believes that the district court opinion upholding the bankruptcy court had been misread in a manner that must have been deliberate. Hamilton's lawyer, former attorney general Elliot Richardson appeared to support this feeling when he told the *St. Louis Post-Dispatch*, (May 8, 1991, 1) "What is at stake here is the integrity of the criminal justice system as well as compensation to individuals who have been victimized by government wrongdoing."

UNCLASSIFIED has also learned that at least part of the Justice Department's refusal to turn over documents in this case, either to the courts or to congressional committees is that the supersecret National Security Agency (NSA) is somehow involved. This alleged involvement may also have played a part in Judge Williams reversal.

**RICONISCIUTO**—In a related development, Michael Riconosciuto, self-styled CIA asset, whose affidavit in the



INSLAW case involves Earl Brian, Robert Gates and others in the unlawful taking of INSLAW's PROMIS software, was suddenly transferred, a few days before his scheduled trial date of June 3, from his place of pre-trial confinement in the State of Washington, to the Federal Medical Correctional Facility in Springfield, Missouri.

Shortly before the transfer, Riconosciuto's lawyers had defeated a government motion to have him transferred to a federal facility for psychological examination to determine his mental competence to stand trial. Suspiciously, immediately after the court ruled, federal marshals, claiming evidence that Riconosciuto was planning an escape, sent him to Springfield where, according to one of his attorneys, he underwent the examination anyway. As of July 3, Riconosciuto has been declared competent and returned to Washington with trial scheduled for August.

Also, despite Drug Enforcement Agency (DEA) claims that Riconosciuto was running a drug laboratory, the Environmental Protection Agency, which carried out an investigation of the site independently, reported that it was, as Riconosciuto claims, a metallurgical facility. This was reported to UNCLASSIFIED by Ted Gunderson, former special agent in charge of the FBI's Los Angeles office, who has taken an interest in the Riconosciuto case. This is affirmed by two other investigators who have examined the evidence as well as by one of Riconosciuto's employees whose brother passed on his statement to UNCLASSIFIED.

The INSLAW case continues, as columnist James Kilpatrick said, to smell to high heavens and beyond to outer space.

**CHRISTIC**—On June 18, the Christic Institute suffered a grievous blow when a three judge panel of the 11th US Circuit of Appeals in Atlanta upheld Miami District Judge James King's June 1988 dismissal of the civil RICO suit brought by Christic on behalf of journalist Tony Avirgan, injured in the 1984 attempt to assassinate Nicaraguan dissident contra leader Eden Pastora by a bomb placed at a press conference at La Penca on the Nicaraguan-Costa Rican border. The panel also upheld the \$1.1 million penalty King had ordered paid to the defendants under federal rule 11 for filing "frivolous" suits. This is the largest penalty ever awarded under the rule. As the *Wall Street Journal* correctly reported in an otherwise error-filled account on June 25, (page B7), civil rights law groups complain that Rule 11 is applied disproportionately against them.

An angry Daniel Sheehan, Christic chief counsel, called the ruling that Christic had shown bad faith in filing a suit which it knew could not be proven "an act of judicial hypocrisy." He pointed out that Costa Rica has already indicted two of the 27 defendants—John Hull and Felipe Vidal—for the La Penca crime and had named a third, Oliver North aide and former Dan Quayle staffer, Robert Owen as a probable participant.

In a statement of June 25 Sheehan said: "We have an executive branch that is directly involved in criminal activities, a Congress that has deliberately failed in its investigation of those crimes, and now the judicial branch is actively obstructing—rather than aiding—the effort of private citizens who are trying to do the work the government should be doing." A pretty good summation of Shadow Justice in action, UNCLASSIFIED believes.

**DURRANI**—Arms dealer Arif Durrani, a key figure in Iran-contra and now October Surprise revelations, continues to be held in close confinement in Hartford, Connecticut. In mid-June, former CIA officer Frank Snepp, now a consultant to ABC-TV news attempted to interview Durrani. Prison officials told Snepp that interviews with Durrani now have to be arranged weeks in advance. No trial date has yet been set and, as previously reported, an Immigration and Naturalization Service (INS) detainer has been placed on Durrani. Evidently, the US government, whose handling of Durrani's trial and subsequent imprisonment have been marked by gross deviations from usual procedures, is determined to get him out of the country and back to Pakistan where security services which work closely with the US can be counted on to keep him out of circulation.

**NORTH**—Flag Day, June 14, had to be one of the blackest days in the history of Shadow Justice. The US Supreme Court had upheld the ruling of US appeals court judge Laurence Silberman, himself a suspect figure in the October Surprise affair, that Oliver North had not had a fair trial since the Independent Counsel had not demonstrated beyond any remote possibility of doubt that his prosecution team had not been influenced in any way by North's or others immunized testimony before the Iran-contra committees. Now the Independent Counsel was back in the district courtroom of Judge Gerhard Gesell.

Gesell argued to prosecutor Michael Bromwich that the case should not be retried because (and here he is probably correct) the evidentiary standard imposed by the appeals court cannot be met. But Gesell abandoned all judicial restraint when he openly fawned on North—whom he had given a slap-on-the-wrist community service sentence after a jury had convicted him—saying that "he served part of his sentence, he served it early, with distinction, conscientiously, and it's highly to his credit." When Bromwich attempted to respond, Gesell stalked out of the courtroom in one of his patented displays of dudgeon.

Earlier, North had snivelled to a radio audience that Judge Walsh was "a vindictive wretch" who was trying to ruin his life.

The *Wall Street Journal* thundered editorially that "telling Mr. Walsh to pack it in would send the message that political prosecutions have no place in this country." The *Journal* should tell that to some of North's victims—Arif Durrani and Terry Reed, for two.

**HULL**—Christic case defendant John Hull is still wanted by Costa Rica, which has asked formally for his extradition on murder and drug charges. There has been no response by the US Department of State to date. The Costa Rican Embassy in Washington has refused to comment on the matter to UNCLASSIFIED. Enquiries to journalists in Costa Rica gained the information that Costa Rican Foreign Minister Bernd Niehaus Quesada will not press too hard for Hull's return. He is trying to become the next Secretary-General of the Organization of American States and does not want to offend Washington.

**WALSH**—To conclude this update of what is happening in the halls of Shadow Justice, a look at the office of the beleaguered Independent Counsel. As usual, there is little di-